

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 SEPTEMBER 25, 2018

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

  
GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 TUESDAY, SEPTEMBER 25, 2018

2 MORNING SESSION

3 THE CLERK: The matter before the Court is Case  
4 Number PC-2017-3856, St. Joseph's Health Services of  
5 Rhode Island v. St. Joseph's Health Services Retirement  
6 Plan. This is on for the Receiver's Sixth Interim Report  
7 and the Fifth Request for Attorneys' Fees. Would counsel  
8 please identify yourselves for the record.

9 MR. DEL SESTO: Good morning, your Honor. Stephen  
10 Del Sesto, Court-appointed Receiver.

11 THE COURT: Good morning. I have had the  
12 opportunity to review the report and fees. You may  
13 proceed, counsel.

14 MR. DEL SESTO: Thank you, your Honor. Your Honor  
15 as was stated at the call of the calendar, we're here on  
16 the sixth interim report and the fifth request for fees  
17 on this matter. Just to recap, I was appointed the  
18 temporary receiver of the plan on August 17, 2017, and  
19 later appointed permanent receiver on October 11, 2017.  
20 We were last before your Honor on the fifth report on  
21 July 26, 2018.

22 I will start with what we ended the fifth report on,  
23 which is at the conclusion of the fifth report, I advised  
24 the Court of a then recently arising issue related to the  
25 transition of information from Angell to GRS. As your

1 Honor knows, we had a conference immediately after, I  
2 believe it was the very next day, between myself and  
3 counsel, for Angell. I am happy to report to the Court  
4 that after a very fruitful and constructive telephone  
5 conference between GRS, Angell, as well as counsel, the  
6 issue had been resolved. It was resolved relatively  
7 quickly and without much concern and that the information  
8 transition started about early August.

9 As of today, I would report to the Court that we are  
10 what I would call maybe about 90 percent completed with  
11 the transition of the information that Angell has used  
12 over the past 10 to 12 years in their capacity as  
13 actuary. All that remains is there are five benefit  
14 calculation summaries that need to be produced over to  
15 GRS.

16 In addition to that, GRS has begun the process of  
17 preparing and completing the 2017 actuary evaluation.  
18 And the only thing, I'm leaving this outside of the 98  
19 percent, but Angell advised us about a week and a half to  
20 two weeks ago that they also have, in hard copy form  
21 only, all the documents that they had obtained from  
22 Payon, who is the predecessor actuary and asked GRS if  
23 they wanted that as well. After a very brief discussion,  
24 it was determined that that information is relevant and  
25 was utilized by Angell and GRS would need to go back and

1 determine certain information regarding a participant's  
2 benefit calculation. So that information now has to be  
3 compiled, boxed, and delivered to GRS.

4 Like I said, that issue just came up for the first  
5 time about two weeks ago and it's in the process of being  
6 done. There are no issues that I see in getting it done  
7 other than the fact that it will take time because it's  
8 in hard copy, not digital. So other than that, GRS is  
9 fully on board. At the very beginning of August, one of  
10 the main focuses of the conversation with Angell was to  
11 get information over to GRS that was essential to making  
12 sure that the participants, who either sought to file an  
13 application or were at an election stage, that  
14 information could be dealt with quickly so that those  
15 participants could be -- those that elected to be on  
16 receiving benefits as quickly as possible and those that  
17 had application that that process could move along as  
18 quickly as possible.

19 I'm happy to say GRS got on that very very quickly  
20 and was able to process all of the elections with the  
21 exception of one and two in advance of the September 1st  
22 payment date and that the rest, obviously, will start on  
23 October 1st and the application process is moving along  
24 very very quickly. All reports back to me from any  
25 participants are that the communication process between

1       them and GRS has been very, very, very fluid, flawless,  
2       that GRS has been responsive and I received no complaints  
3       from anybody about timing or anything of that nature.

4             Your Honor, in this process we, I'll call it, put in  
5       quotes, we established a new team for the plan. That  
6       team includes GRS, who I just mentioned as the plan  
7       actuary, Caliber, who are the accountants for the plan.  
8       I've also brought on Jeffrey Cohen, from Bailey &  
9       Ehrenberg in Washington, DC. As the Court may recall  
10      Attorney Cohen was general counsel with PBGC for about 15  
11      years so he has a welcome experience in that area. And  
12      the only member who is not new to the plan is Mercer. I  
13      have gotten into a routine with each one of those parties  
14      where I have constant e-mails with them, but we have a  
15      call scheduled depending on the party every week or every  
16      two weeks as being necessary to discuss relating to the  
17      plan, issues related to the investment portfolio, so on  
18      and so forth.

19            I did have a face-to-face meeting with Mercer in  
20      August which we reviewed market conditions, the  
21      investment portfolio, and things of that nature, and in  
22      addition to regular e-mails, I continue to have calls  
23      with them every 10 to 14 days. While I understand that  
24      the investment is a longer term issue, I want to make  
25      sure that we aren't surprised by anything and that Mercer

1 is consistently reviewing and assessing where our  
2 position is to make sure if there is a downturn in the  
3 market, the result to the plan will be as minimal as  
4 possible.

5 As of the end of July we had just over \$81 million  
6 in the plan and that continues. The significant erosion  
7 in those assets, if your Honor recalls, in the beginning  
8 we had approximately \$5 million. As a result of the  
9 unfreezing of applications and collections, there were  
10 several payments that needed to be made all at once in  
11 March, April, May, and June. That is what has resulted  
12 in the erosion, not market conditions or things like  
13 that, just those payments going in.

14 As the Court knows we filed complaints in both this  
15 Court as well as the federal court against 14 defendants.  
16 We also filed a motion to intervene in the Superior Court  
17 Cy Pres matter which arose out of the 2014 hospital  
18 conversion transaction. The state court litigation, as  
19 the Court knows, has been stayed by consent of the  
20 parties. The federal court litigation is ongoing.

21 We had a conference with Judge Smith on July 30th  
22 where the Court set a briefing schedule to deal with  
23 dispositive motions. That briefing schedule required all  
24 defendants to file their dispositive motions on September  
25 15th. I believe it actually rolled to the 16th, because

1 the 15th was a Sunday. Then we have until November 15th  
2 to provide responses, and then December 15th for the  
3 Defendants to provide their responses to our responses.  
4 I can tell your Honor that all parties with the exception  
5 of St. Joseph Health Services of Rhode Island, Roger  
6 Williams, and CharterCARE Community Board all filed some  
7 dispositive motions in the federal case, which we will be  
8 responding to in the deadline set by that court.

9 In addition to that, as this Court is well aware,  
10 Judge Smith had sent notice out identifying that there  
11 will be a conference tomorrow morning with all parties,  
12 Judge Smith, and your Honor, to discuss the coordination  
13 of the two courts with the various receivership Cy Pres  
14 and state litigation, federal litigation issues, as well  
15 as the motion to settle and things of that nature. That  
16 will obviously happen tomorrow morning at 9:30.

17 On June 18th we filed a motion to intervene. As the  
18 Court is well aware, that issue was extensively briefed.  
19 We had a hearing on September 13th and then on September  
20 17th, last Monday, a week ago Monday, this Court issued a  
21 bench decision granting that motion. We will now move  
22 forward as is appropriate in the motion to intervene. In  
23 addition, there was a motion to lift confidentiality of  
24 certain documents that were produced to the Receiver  
25 during the investigatory phase relating to the 2014



1 Hospital Conversion Application. There were responses  
2 but no objections to that motion to lift and the Court  
3 entered an order approving that motion to lift the  
4 confidentiality for a limited purpose as to certain  
5 documents on September 17th as well.

6 The most significant thing that has happened, your  
7 Honor, in this case probably since the filing of the  
8 complaints, was on September 4th we filed a petition to  
9 approve settlement of the litigation claims that we had  
10 asserted against St. Joseph's Rhode Island Health  
11 Services, Inc., Roger Williams, as well as the  
12 CharterCARE Community Board. A hearing was scheduled on  
13 that matter for September 13th. However, CharterCARE  
14 Foundation filed an objection, the Attorney General's  
15 Office joined in that objection, and the Prospect  
16 entities filed a motion to continue that hearing. After  
17 a very brief hearing, the Court did agree to continue  
18 that hearing to October 10th and set a briefing schedule  
19 for the parties. Based on the briefing schedule any  
20 objections to the settlement are due on September 27th  
21 and then the Receiver will have until October 5th to  
22 reply with a hearing on the 10th.

23 Just in summary, your Honor, for the benefit of the  
24 record, the settlement is between the Receiver as well as  
25 the other named Plaintiffs from the class action and

1 St. Joseph's Health Services, Roger Williams, and  
2 CharterCARE Community Board. The result of that  
3 settlement will be an immediate payment of \$11.15 million  
4 to the estate for the benefit of the plan, and there is  
5 also the assignment of certain rights and interests that  
6 will go along as to any one of those three settling  
7 entities believe that they hold. The minimum that the  
8 plan will receive from that settlement is the \$11.5  
9 million. There is the potential for more. As I stated,  
10 this Court will address the settlement on October 10th  
11 and the other couple of high point details. I'm not  
12 going to get into the issue because it's being briefed at  
13 this time.

14 In addition to all of that, your Honor, I continue  
15 to meet with the advisory committee. Although as a  
16 result of the transition from Angell to GRS, those  
17 meetings have been suspended for a short period of time  
18 mostly because we do require for discussion of those  
19 meetings information that the actuary produces, so we  
20 wanted to get the new actuary in place so they could not  
21 only confirm information that we previously received, but  
22 also could respond with other data that we think is  
23 relevant to those discussions.

24 I continue to have the monthly Town Hall meetings  
25 and they are still very well attended. I believe,

1 although I don't take a head count at the meetings, it's  
2 generally about 100 to 150 people that attend and then a  
3 digital recording of those meetings are posted on the  
4 website so that any person who either can't attend  
5 because of a scheduling conflict or because they don't  
6 lend a stake in the view of what is discussed in those  
7 meetings.

8 Your Honor, at this time I would like to formally  
9 ask the Court to renew the postponement of the benefit  
10 adjustment. As we stated I believe it was on the fourth  
11 report, I wanted to get the timing of that issue in line  
12 with the timing of the reports for the same reasons that  
13 I stated in March and each report thereafter, I am asking  
14 that this Court defer any requirement of me to present a  
15 benefit adjustment to the Court until at least the  
16 seventh interim report, which I will be asking the Court  
17 to set down for 60 days from now. Obviously, if  
18 something happens in the interim that requires a hearing  
19 on the issue before that, I will seek that hearing from  
20 the Court. But without anything occurring, I will be  
21 asking for a 60-day deferral on that.

22 As of the last report, your Honor, we had cash on  
23 hand of \$360,024.15. As your Honor knows, that money or  
24 funds that were provided to the estate from, I believe,  
25 it was Roger Williams from cash that they had on hand.

1 Since the last report, your Honor, we had no receipts, no  
2 additional money has come in. We had disbursements  
3 totaling \$243,850.58, leaving cash on hand at this time  
4 in the amount of \$116,173.57.

5 That concludes my report, your Honor. If you have  
6 no question or unless you have any questions, I will move  
7 on to the fee portion.

8 THE COURT: That's fine. Just to clarify as far as  
9 the transition to GRS, that is complete at this point and  
10 we're getting less phone calls about the issues?

11 MR. DEL SESTO: Much, much. Actually, I received  
12 almost no phone calls at this point in time regarding  
13 anything relating to the actuarial services. Like I  
14 said, with the exception of the six balance summaries,  
15 everything that could be digitally transitioned over to  
16 GRS has been.

17 THE COURT: Why don't move on to the fee portion.

18 MR. DEL SESTO: Thank you, your Honor. Your Honor,  
19 regarding the fifth request for fees, the fees presented  
20 to the Court run the span of time of July 1, 2018,  
21 through August 31, 2018. Fees and expenses for that time  
22 period total \$64,226.64. As your Honor is well aware,  
23 the fees and expenses associated with Special Counsel now  
24 that the litigation has been filed are in what I will  
25 call the contingency phase, so other hard expenses that

1 are incurred by Special Counsel, there are no fees that  
2 are being sought by Special Counsel going forward. So  
3 the fees represent only the fees, costs, and expenses of  
4 me and my team relative to that two-month period. And  
5 unless there is any objection, I would be asking the  
6 Court to approve that amount in full in connection with  
7 the 6th interim report.

8 THE COURT: Thank you very much, counsel. The Court  
9 prior to hearing received no objection to the Receiver's  
10 sixth interim report. Does anyone wish to be heard with  
11 respect to the report? Hearing none, as I said, the  
12 Court has reviewed your report beforehand. I just want  
13 to hit on a couple of points. During your last report  
14 there were some issues raised as far as a letter received  
15 from Angell and I do want to thank Attorney Boyajian, who  
16 resolved any miscommunications. I am very happy to hear  
17 that is moving forward.

18 Second, as counsel mentioned Chief Judge Smith and I  
19 are both in a joint conference call on the state and  
20 federal action with respect to case management tomorrow  
21 morning with the attorneys that have entered in the case  
22 itself. At this point what is pending before the Court  
23 other than this motion is the petition to approve the  
24 settlement by the Receivership and that is currently  
25 scheduled for October 10th. The Court has reviewed the

1 report, the Court ratifies the acts and deeds of the  
2 Receiver, and has also reviewed, and I did receive an  
3 in-camera copy of the fees, costs, and expenses by the  
4 Receiver. Again, as you stated properly, the Special  
5 Counsel has converted over to a contingency fee at this  
6 point. I have reviewed the fees and expenses and I find  
7 those are fair and reasonable and for the benefit of the  
8 estate and that amount is approved.

9 Finally, this will be the last hearing we will have  
10 in Presiding Justice Gibney's courtroom in Courtroom 12.  
11 As of next week, I'm not happy about the reason, but  
12 Justice Silverstein will be retiring on Friday. I will  
13 be moving in Courtroom Five which is large enough to  
14 accommodate everyone in the case. Please submit the  
15 appropriate order to the Court.

16 MR. DEL SESTO: I will, your Honor. Just the order  
17 does indicate, your Honor, that we will be setting the  
18 next hearing down for 60 days. Based on my quick  
19 calculations, I have that right around Thanksgiving. So  
20 that may go into December.

21 THE COURT: That's fine. If you can just coordinate  
22 with Miss Miley.

23 MR. DEL SESTO: I will. I have an order, your  
24 Honor.

25 THE COURT: Very good. You can hand that up.

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(Document handed to the Court.)

THE COURT: And incorporated in the order, I forgot to mention, that we will defer any recommendation as far as any adjustment of benefits.

MR. DEL SESTO: Thank you.

THE COURT: Thank you. The Court is in recess.

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