

**HEARING DATE:
WEDNESDAY, MAY 15, 2019 AT 9:30 AM
PROVIDENCE COUNTY BUSINESS CALENDAR BEFORE JUDGE STERN**

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Petitioner

vs.

St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

Respondent

Bank of America, in its capacity as Trustee of
Respondent

Nominal Respondent

PC-2017-3856

**RECEIVER'S NINTH INTERIM REPORT AND EIGHTH INTERIM REQUEST FOR
APPROVAL OF FEES, COSTS AND EXPENSES**

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Receiver (the "Receiver") for St. Josephs Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby submits this Ninth Interim Report (the "Ninth Report") and Eighth Interim Request for Approval of Fees, Costs and Expenses (the "Eighth Fee Application"). In support of the Ninth Report and Eighth Fee Application the Receiver states as follows:

1. This case was commenced on August 17, 2017, upon the Petition for the Appointment of a Receiver (the "Petition") filed by St. Joseph Health Services of Rhode Island, Inc. ("Petitioner"). As a result of that Petition, on August 18, 2017, this Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan under surety bond ordered by this Court in the amount of One Million and 00/100 (\$1,000,000.00) Dollars (the "Temporary Receiver Order").

2. The Plan is a defined benefit plan organized by Petitioner on or about July 1, 1965, for the benefit of Petitioner's employees. As of the date of the Petition, the Plan had approximately 2,729

vested participants¹ of which approximately 1,229 were then receiving monthly benefits payments. As of the benefits payments issued by Bank of America on May 1, 2019, 1,393 participants are currently receiving monthly benefits payments.

3. Typically, a hearing on permanent receiver is set for a date approximately twenty (20) days after the appointment of temporary receiver. Here however, the Petitioner requested that the Court set a hearing date no sooner than thirty (30) days to afford the Temporary Receiver time to consider the Petitioner's suggested 40% uniform benefit reduction. Based on that request, the Court docketed the hearing on permanent receiver for October 11, 2017.

4. Immediately upon appointment, in order to provide pension holders with a direct means to obtain answers to questions and access to information, the Receiver established a dedicated email address (stjosephretirementplan@pierceatwood.com) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated, public website (<https://www.pierceatwood.com/st-joseph-health-services-rhode-island-retirement-plan>) where all pleadings and other information would be posted for easy accessibility to pension holders and other interested parties. Notice of the dedicated email, phone lines and website was sent to all Plan participants via first class mail. The Receiver believes that establishing these various means of communication has been invaluable to the pension holders and the Receiver. Since establishing the email address and phone lines the Receiver has received hundreds of email and voicemail communications from pension holders. The dedicated website has been revised to now include access to filings made in both the State and Federal litigation matters as well as other related litigation matters related to this proceeding.

5. Due to their day-to-day involvement with the Plan, the Receiver initially had consistent and regular communications with Bank of America (the Plan's Trustee and custodian of the assets) and Angell Pension Group (the Plan's actuary and benefits administrator at the time) regarding the management and administration of the Plan. The Receiver has reviewed quarterly reports and had

¹ According to documents reviewed by the Receiver, excluding United Nurses and Allied Professionals Local 5110 ("UNAP") members hired before October 1, 2008, the Plan was closed to all employees on or about October 1, 2007. Thereafter, benefit accruals were frozen for non-union employees on September 30, 2009, for Federation of Nurses and Health Professionals and other non UNAP union employees on September 30, 2011 and for UNAP employees on June 19, 2014.

periodic discussions with Mercer Investment (the Plan's discretionary Investment Manager) regarding the performance of asset investments, the allocation of the asset investments and market conditions and projections that may impact those investments. The Receiver is aware that, among the pension holders and other interested parties, there existed a level of distrust and concern regarding the pre-receivership administration and oversight of the Plan. As a result, the Receiver has already made changes regarding the day-to-day management and administration of the Plan and its assets and will continue to evaluate and make changes as may be prudent or necessary.

6. Approximately every 4-6 weeks throughout this proceeding the Receiver hosts town-hall style, informational meetings at Rhodes on the Pawtuxet in Cranston, Rhode Island. At these meetings the Receiver provides a current status of the receivership proceedings. In addition and in an effort to assure complete transparency of the receivership process and the Receiver's efforts, the Receiver responds to questions raised by the meeting participants regarding various aspects of the receivership and the Plan. Understanding that not all participants can attend these meetings, the Receiver digitally records each meeting and a link to the meeting recordings are posted to the Receiver's dedicated website.

7. Prior to this Ninth Report and Eighth Request for Approval of Fees, the Receiver has filed eight (8) prior reports with the Court and seven (7) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report, Second Report, Third Report, Fourth Report, Fifth Report, Sixth Report, Seventh Report, Eighth Report and related Orders are on file with the Clerk of the Court and accessible on the Receiver's dedicated website and all are incorporated by reference and made a part of this Ninth Interim Report as if fully set forth herein.

8. On March 29, 2018, this Honorable Court held a hearing on the "Receiver's Initial Recommendations Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Relative to the Processing of Pending Benefits Elections and Properly Filed Applications" (the "Initial Benefits Recommendation"). Subsequent to the hearing on the Initial Benefits Recommendation on April 4, 2018, this Court entered an Order (a) approving the Receiver's Recommendation, (b) deferring any recommendation on benefits modification for a period of approximately ninety (90) additional days, and (c) lifting the September 1, 2017, stay regarding

the processing of elections and benefits applications (the “Initial Benefits Recommendation Order”).

9. On or about June 28, 2018, as part of the Fourth Report, the Receiver advised the Court that litigation had been initiated in both State Court (*Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc.* (PC-2018-4386)) (the “State Litigation”) and Federal Court (*Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc.* (1:18-cv-00328-WES-LDA)) (the “Federal Litigation” together with the State Litigation shall be referred to as the “Litigation”) against various defendants and Special Counsel provided the Court with a status update of those actions and related next steps for the Litigation.

10. On March 1, 2019 this Court held a hearing on the Receiver’s Eighth Interim Report and Seventh Interim Request for Approval of Fees, Costs and Expenses (the “Eighth Report”). Upon conclusion of the hearing, the Court granted the Eighth Report and granted the Receiver’s oral recommendation to further postpone any modification to benefits payments until, at least, the hearing on this Ninth Report.

11. Since the filing of and hearing on the Eighth Report, the following events have occurred in this Superior Court Receivership action:

- a. On or about January 2, 2019, the Prospect Entities jointly filed a Notice of Intent to Sue CharterCare Community Board, or in the Alternative, Motion for Relief From

the Injunctive Provisions of the Permanent Receivership Order, with supporting Memorandum (the “Notice and Motion for Relief”). The parties engaged in discussions and jointly conferenced with both this Honorable Court and the United States District Court for the District of Rhode Island regarding this and all related issues which resulted in several continuances by agreement of the parties. On March 11, 2019 the Receiver filed an Objection to the Notice and Motion for Relief with Supporting Memorandum. On April 27, 2019, the Prospect Entities filed a Reply to the Receiver’s Objection and on May 1, 2019, the Receiver filed a Sur-Reply. The matter was heard on May 2, 2019, and upon conclusion of the hearing, this Honorable Court took the matter under advisement.

12. Since the filing of and hearing on the Eighth Report, the following events have occurred in the Federal Litigation:

- a. On February 18, 2019, the Prospect Entities filed a Joint Motion for Leave to Propound Limited Discovery Relating to Settlement Between Plaintiffs and CharterCare Community Board. On March 4, 2019, Plaintiffs filed an Objection to the Motion for Discovery of Settlement Negotiations with supporting Memorandum. As of the date of this filing no action has been taken on this Motion.
- b. On February 12, 2019, the Federal Court conducted a hearing on the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval (the “First Federal Motion to Approve Settlement”) Settlement and all Oppositions, Replies and Sur-Replies filed in connection therewith. Upon conclusion of oral argument by all parties, the Court took the Motion under advisement, directed Plaintiffs to prepare and circulate to all objecting parties a proposed order, and established timeframes for parties to either agree to the form of order or, absent a consensus, present their own form of order. In addition, the Court requested parties submit post-hearing memorandum. In accordance with the Court’s instruction:
 - i. Parties exchanged forms of proposed orders preliminary approving the first settlement. No one form of proposed order was agreed upon and as a result, on February 26, 2019, Plaintiffs filed a Notice of Proposed Orders which

presented (i) Plaintiffs' and Settling Defendants' proposed Order, and (ii) Prospect Entities' and Diocesan Entities' proposed order;

- ii. In addition, and at the request of the Court, parties submitted post-hearing memorandums and replies to same:
 - a. On February 26, 2019, Plaintiffs and Defendants, CCCB, SJHSRI and RWH, jointly submitted a Post-Hearing Memorandum;
 - b. On March 12, 2019, the Diocesan Entities submitted their Post-Hearing Brief Addressing Proposed Orders on Preliminary Settlement Approval and Question Regarding Federal Receivership;
 - c. Also, on March 12, 2019, the Prospect Entities submitted their Post-Hearing Memorandum in Opposition to Settlement Motion;
 - d. Angell Pension Group, Inc. filed a Statement Regarding Appointment of Federal Receiver on March 12, 2019; and
 - e. Plaintiffs and CCCB, SJHSRI and RWH filed Replies to the Diocesan Entities' and Prospect Entities' Post-Hearing Memorandums.
- c. On or about December 4, 2018, the Prospect Entities (jointly), the Roman Catholic Bishop of Providence, Diocesan Administration Corporation and Diocesan Service Corporation (jointly), and Angell Pension Group, Inc. filed their respective Motions to Dismiss the Federal Action pursuant to Fed. R. Civ. P. 12(b)(6). In their Motions, those Defendants generally set forth arguments that dismissal is warranted because the Receiver failed to join an indispensable party, the Pension Benefit Guaranty Corporation; the Class Plaintiffs lack standing; the First Amended Complaint fails to state a claim for which relief can be granted, including pleading fraud with particularity; and/or the Receiver's claims are preempted by federal law. On February 4, 2019, the Receiver and other Litigation Plaintiffs filed individual Objections to each Motion to Dismiss, an Omnibus Memorandum in Support of Objections to Defendants' Motions to Dismiss, and an Objection to Angell Pension Group's Request for Judicial Notice. Since the filing of the last report:

- i. On March 4, 2019, Angell Pension Group filed (i) Reply to Plaintiffs' Objection to Request for Judicial Notice, and (ii) Reply to Plaintiffs' Objection to Motion to Dismiss, Prospect Entities filed a Reply to Plaintiffs' Opposition to their Motion to Dismiss, and the Diocesan Entities filed their Reply in Further Support of their Motion to Dismiss the First Amended Complaint;
- ii. During a joint conference conducted by both the Federal Court and Superior Court Judges, and attended by counsel to all parties, parties agreed to mediation in which Plaintiffs, settling Defendants and non-settling Defendants will all take part. Presently, mediation sessions are scheduled for Thursday, May 16, 2019, and Friday, May 17, 2019.

13. In addition to the events and actions identified above relative to the Federal Court litigation and Superior Court Receivership actions, the Receiver took a significant action which he believed was necessary and appropriate and which he is hopeful will provide a possible and substantial benefit to the Plan's survival for the benefit of its participants who rely on its survival.

In the Order Appointing Permanent Receiver (the "Permanent Receiver Order") entered on October 27, 2017, this honorable Court established the Receiver's duties with respect to the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"). The Order generally authorizes the Receiver to monitor, manage and administer the Plan and its assets on behalf of its participants and beneficiaries. Among other actions, the Receiver may engage actuaries, investment advisors, benefit administrators and other professionals to perform various administrative tasks and services for the Plan. The Receiver may also initiate and litigate claims against third parties on the Plan's behalf, acquire and dispose of property, direct investments and pay Plan-related expenses from the assets held in trust.

Typically, pension plans are subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and are administered in accordance with ERISA's requirements. However, there are certain types of retirement plans that are exempt from the rules and protections of ERISA, including non-electing "Church Plans" (which are defined under Section 414(e) of the Internal Revenue Code). Prior to the Receiver's appointment, the entities that historically

sponsored and administered the Plan claimed that the Plan qualified as a Church Plan at all times following its adoption by St. Joseph Health Services of Rhode Island on July 1, 1965 (and therefore, was always exempt from ERISA).

In the federal lawsuit brought by the Receiver, the Receiver contends that these prior sponsors intentionally misclassified the Plan as a Church Plan in an effort to avoid their obligations and responsibilities as fiduciaries of an ERISA-covered defined benefit pension plan. The Receiver contends in the lawsuit that the Plan was not exempt (at various times) and, therefore, was governed by ERISA. The Receiver has also asserted state law claims, in the alternative, that ERISA was not applicable (at various times). These questions are dependent on factual and legal issues that are expected to be determined by the Court in the federal lawsuit as it proceeds.

Pending those determinations and based upon advice from his retained experts, the Receiver has taken steps to revise the Plan's terms and to administer benefits in a manner that complies with the requirements of ERISA and the tax-qualification rules of the Internal Revenue Code on a going forward basis. As part of that effort, the Receiver adopted a revised Plan document on April 15, 2019, subject to a retroactive effective date of July 1, 2017 (the "Effective Date"). The Receiver also retained and directed certified public accountants and an actuary to prepare and file an annual financial report on behalf of the Plan with the United States Department of Labor and Internal Revenue Service, as is normally required of ERISA-covered pension plans. Lastly, the Receiver also has filed an election (as part of that annual report) to have the Plan covered by ERISA for all Plan Years beginning on or after the Effective Date.

In connection with the above actions and filings, the Receiver has tendered an initial premium (calculated by the Plan's Actuaries) to the Pension Benefit Guaranty Corporation ("PBGC"). PBGC is a federally chartered corporation created by ERISA to protect the rights and retirement benefits of individuals who participate in ERISA-covered pension plans. PBGC is essentially an insurance company funded by premiums it collects and not financially supported by the federal government. Subject to certain limitations, PBGC guarantees payment of benefits to ERISA-plan participants during retirement in exchange for annual premiums paid by their employer. However, there can be no assurance that PBGC will provide any coverage for pension fund shortfalls as a result of underfunding prior to that Effective Date or at all.

It is the Receiver's position that these actions were necessary and should not affect the claims the Receiver and the other plaintiffs have asserted in the federal lawsuit, which are based on conduct that preceded the Effective Date.

14. As of the Eighth Report, regarding the general administration of the Estate, the Receiver held a town-hall style, informational meeting on April 8, 2019. At this meeting, the Receiver provided the status of (i) the proposed Settlement between the Receiver, the other Litigation Plaintiffs, Special Counsel, SJHSRI, CCCB and RWH; (ii) the proposed Second Settlement between the Receiver, other Litigation Plaintiffs, Special Counsel, CCF, SJHSRI, CCCB and RWH; (iii) disputes concerning CCCB and Prospect; and (iv) addressed questions and concerns raised by Plan participants regarding the proceedings and the Plan generally. It is anticipated the next town-hall style meeting will occur toward the end of May, or earlier in the event the Receiver deems appropriate.

15. The Receiver continues to receive and review documents related to the Plan and its history although he has temporarily suspended meetings with Advisory Committee until GRS, the new Plan actuary, has been able to complete its intake and analysis of all information relative to the Plan. The suspension was necessary because an essential component of the Advisory Committee meetings is current and hypothetical benefits data that provide the basis for the Committee to discuss possible benefits adjustments scenarios in order to endeavor for the Committee to cooperatively identify an equitable, interim adjustment in the event that an adjustment becomes absolutely necessary or unavoidable to better protect and preserve the Plan's assets.

16. With regard to Plan assets, since the inception of this proceeding in August 2017, the Plan assets have reduced by approximately thirteen and a half percent (13.5% or approximately \$12,000,000). As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In the nineteen (19) months since (as of March 31, 2019), the Plan assets totaled approximately \$73,911,517.93. The largest factor in the reduction of the Plan assets is monthly benefit payments. It is important to note that during that 19 month period the Plan paid out monthly benefit payments, retroactive benefit payments and other payments and fees related to Plan maintenance and services totaling approximately \$22,000,000. Thus, during that same 19

month period the re-allocation of investments and resulting investment income has off-set the Plan's \$22M in expenses so that the reduction impact experienced by the Plan is \$12M as opposed to \$22M.

The erosion of Plan assets became more significant following the end of March 2018 when the Plan assets totaled approximately \$83,238,244.35. In addition to the typical monthly benefit payment and Plan related expense obligations, there have been several factors/changes that have occurred which have negatively impacted the Plan asset value, including, without limitation:

- a. The "unfreezing" of benefit applications in March 2018. This resulted in significant retroactive payments being made to newly collecting participants. In addition, as a result of those processed applications and elections the monthly benefits payments increased from approximately \$850,000 per month to slightly less than \$1M per month. The monthly benefit increase alone accounts for an additional annual benefit payment obligation of approximately \$1,500,000;
- b. Beginning in or about February 2018, the consistent and strong market performance that the Plan had been experiencing for a significant period of time has been more volatile, and recently, less strong. The Receiver adjusted the investment allocation for the Plan assets in or about February 2018/March 2018 which provided some protection from the recent market down-turn. Over the past six (6) or more months the market's volatility has resulted in, at least, some short term uncertainty as to the Plan's investment performance.

Based upon the value of the Plan assets and the current and projected market performance, the need for additional funds (to be realized from the settlements presented to this Court) to support the Plan is becoming more critical every day.

17. Contemporaneous with seeking this Court's approval, confirmation and ratification of all of the Receiver's acts and doings through and in connection with this Ninth Report, absent any emergency circumstances, the Receiver is recommending and requesting this Honorable Court's approval to further postpone a modification to monthly benefit payments until the hearing on the Receiver's Tenth Interim Report which will be docketed for approximately sixty (60) days from

the hearing on this Ninth Report. Consistent with the reasons set forth in the “Receiver’s Initial Recommendations Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Relative to the Processing of Pending Benefits Elections and Properly Filed Applications for Benefits” (the “March Recommendation”) and approved by this Court via Order entered on or about April 4, 2018, the Receiver recommends that a further deferral of any recommendation on benefits adjustments until the hearing on the Tenth Interim Report is appropriate. Copies of the March Recommendation and related Order are on file with the Clerk of the Court and accessible on the Receiver’s dedicated website and each are incorporated by reference and made a part of this Ninth Interim Report as if fully set forth herein.

18. In connection with the administration of the within proceeding, as of the filing of the Eighth Report on or about February 19, 2019, your Receiver had cash-on-hand totaling \$69,195.40. Since that time, your Receiver has not had any additional receipts and has had additional disbursements totaling \$9,324.54, leaving current cash-on-hand in the sum of \$58,870.86, all as set forth in the **“Schedule of Receipts and Disbursements”** attached hereto.

19. In connection with this Ninth Report, your Receiver is requesting that the Court approve the Eighth Fee Application. The Receiver’s fees, costs, and expenses associated with the Eighth Fee Application and incurred for the two (2) month period from February 1, 2019 through, and including, March 31, 2019, total approximately \$65,000.00. The Receiver respectfully requests that this Court approve the Eighth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver’s Eighth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Ninth Report. Due to the Litigation and the related descriptions and narratives in time entries, to avoid any potential disclosure, strategy, attorney-client privileged communications, etc., the Receiver requests that the redacted invoices submitted to the Court be filed under seal.

20. As of April 22, 2019, Special Counsel has incurred out-of-pocket expenses and costs totaling \$33,071.16. Consistent with the Receiver’s engagement with WSL, the Receiver respectfully requests that this Court approve and authorize the Receiver to satisfy said out-of-pocket expenses and costs of Special Counsel, subject to available cash-on-hand.

WHEREFORE, your Receiver prays that this honorable Court enter an order or orders: (1) approving, confirming and ratifying all of the Receiver's acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Ninth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Eighth Fee Application for his services as Temporary and Permanent Receiver herein; (3) approving Special Counsel's out-of-pocket costs incurred through April 22, 2019, in the amount of \$33,071.16, and authorizing the Receiver to satisfy said expenses, subject to available cash-on-hand; (4) approving the Receiver's recommendation, absent any emergency circumstances, to further postpone any modification to monthly benefit payments until the hearing on the Receiver's Tenth Interim Report; (5) directing that this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the Receivership Estate; and (6) granting such further relief as this Honorable Court deems necessary and appropriate.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336)
Solely in his capacity as Permanent Receiver
for St. Josephs Health Services of Rhode
Island Retirement Plan, and not individually
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: May 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2019, I electronically filed and served the within document via the Electronic Case Filing System of the Superior Court with notice to all parties in the system.

/s/ Stephen F. Del Sesto

SCHEDULE OF RECEIPTS AND DISBURSEMENTS

10:45 AM
05/06/19
Accrual Basis

**St Joseph Health Services of RI Retirement Plan
Transactions by Account 021919
As of May 6, 2019**

Date	Num	Name	Memo	Balance
BankRI Checking Account				
03/29/2019	306	Relevant Discover-e	Inv #5086: copying & postage	69,195.40
04/04/2019	307	Rhodes on the Pawluxet	Inv #1739: 4/8/19 meeting with participants	66,148.86
04/09/2019	308	William White Legal Video Services	Inv #1683: video & audio for 4/8/19 meeting	64,648.86
04/16/2019	309	US Department of Labor DFVCP	delinquent filer payment in connection with Form 5500 filing ma...	63,948.86
04/29/2019	310	Relevant Discover-e	Inv #5250: copying & postage	63,208.86
Total BankRI Checking Account				59,870.86
TOTAL				59,870.86