

**HEARING DATE:
FRIDAY, MARCH 1, 2019 AT 11:00 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 EIGHTH INTERIM REPORT AND SEVENTH 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 Eighth Interim Report (the "Eighth Report") and Seventh Interim Request for Approval of Fees, Costs and Expenses (the "Seventh Fee Application"). In support of the Eighth Report and Seventh 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 February 1, 2019, 1,379 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 each month 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 Eighth Report and Seventh Request for Approval of Fees, the Receiver has filed seven (7) prior reports with the Court and six (6) 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 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 Eighth 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 December 14, 2018 this Court held a hearing on the Receiver’s Seventh Interim Report and Sixth Interim Request for Approval of Fees, Costs and Expenses. Upon conclusion of the hearing, the Court entered an Order granting the Seventh Report, approving the requested fees, costs and expenses and granting the Receiver’s recommendation to further postpone any modification to benefits payments until, at least, the hearing on this Eighth Report.

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

- a. On December 27, 2018, this Court entered an Order granting the Receiver’s Petition for Settlement Approval in connection with the proposed settlement between the

Receiver, other Litigation Plaintiffs, CharterCare Foundation (“CCF”), St. Joseph Health Services of Rhode Island (“SJHSRI”), CharterCare Community Board (“CCCB”) and Roger Williams Hospital (“RWH”). This Court found the Proposed Settlement Agreement (“PSA”) to be in the best interests of the Receivership Estate and authorized the filing of the PSA with the Federal Court at an appropriate time for further proceedings. If approved by the Federal Court, the gross settlement proceeds that would be due to the Estate for the benefit of the Plan total approximately \$4.5 Million.

- b. 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 parties have engaged in discussions regarding this and all related issues which have resulted in several continuances by agreement of the parties. Those discussions continue and the Motion for Relief is currently set for hearing on March 1, 2019.

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

- a. In accordance with this Court’s Decision dated October 29, 2018 and Order dated November 16, 2018, as to seeking approval of the first proposed Settlement in the Federal Court, on or about November 21, 2018, the Plaintiffs, SJHSRI, RWH and CCCB filed a Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval (the “First Federal Motion to Approve Settlement”). On or about December 5, 2018, parties stipulated to a briefing schedule, and in accordance with same:
 - i. On December 21, 2018, the Diocesan Defendants filed (a) a Response in Opposition to the First Federal Motion to Approve Settlement, and (b) Rule 5.1 Notice of Constitutional Challenge of Rhode Island Statute;
 - ii. On December 24, 2018, the Prospect Entities Defendants filed a Joint Opposition to the First Federal Motion to Approve Settlement;

- iii. On January 21, 2019, Plaintiffs filed their Replies to both the Diocesan Defendants' and Prospect Entities' Oppositions to the First Federal Motion to Approve Settlement;
 - iv. On January 22, 2019, SJHSRI, RWH and CCCB jointly filed joinders to Plaintiffs' Replies to both the Diocesan Defendants' and Prospect Entities' Oppositions to the First Federal Motion to Approve Settlement; and
 - v. On January 25, 2019, the Prospect Entities filed a Joint Motion for Leave to File Sur-Reply to Plaintiffs' Reply. Upon the Federal Court's granting of this Motion, on February 5, 2019, the Prospect Entities filed their Joint Sur-Reply.
- b. On February 12, 2019, the Federal Court conducted a hearing on the First Federal Motion to Approve 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.
- 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 the 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; and, as of the date of this filing, a hearing date has not yet been set.

d. In accordance with this Court's Order dated December 27, 2018, as to seeking approval of the second proposed Settlement in the Federal Court, on or about January 4, 2019, Plaintiffs along with Defendants CCF, SJHSRI, RWH and CCCB, filed a Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval (the "Second Federal Motion to Approve Settlement"). The proposed Second Settlement proposes to settle the claims asserted against the CCF and The Rhode Island Community Foundation. It does not resolve claims against other Defendants or efforts to avoid the sale of Our Lady of Fatima Hospital and Roger Williams Hospital. Subject to the approval of the Federal Court, once finalized, it is the Receiver's opinion and intention that the terms of the proposed Second Settlement would immediately bring gross cash settlement proceeds of approximately \$4,500,000 into the Estate for the benefit of the Plan. Under the terms of the proposed Second Settlement, CCF would transfer all of CCCB's "Foundation Interests" to the Receiver. In connection with this Motion, and also on January 4, 2019, Attorney Max Wistow filed a Supplemental Declaration in Support of the Second Federal Motion to Approve Settlement and Plaintiffs' counsel filed a Motion for Award of Attorneys' Fees. As of the date of this filing, these matters have not yet been scheduled for hearing. The following have been filed in response to the Second Motion:

- i. On January 18, 2019, the Diocesan Defendants jointly filed an Opposition to the Second Federal Motion to Approve Settlement and Motion for Award of Attorneys' Fees;
- ii. Also, on January 18, 2019, the Prospect Entities filed a Joint Opposition to the Second Federal Motion to Approve Settlement;
- iii. Defendant CCF submitted a Reply Brief in Further Support of Joint Motion for Preliminary Settlement Approval of Settlement Agreement with Respect to CharterCare Foundation;
- iv. On January 25, 2019, Plaintiffs filed Replies to both the Objection of Diocesan Defendants and that of Prospect Entities; and

- v. On January 29, 2019, SJHSRI, RWH and CCCB jointly filed joinders to Plaintiffs' Replies to both the Objection of the Prospect Entities and the Diocesan Defendants' Opposition.
- e. 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. As of the date of this filing, no responses have been filed and no action has been taken on this Motion.

13. Since the hearing on the Seventh Report, regarding the general administration of the Estate, the Receiver held a town-hall style, informational meeting on February 11, 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 and (iii) 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 March.

14. 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.

15. With regard to Plan assets, the Plan assets have eroded by approximately sixteen percent (16%) since the inception of this proceeding in August 2017. As the Court may recall, as of August 31, 2017, the Plan assets totaled approximately \$85,795,641.99. As of December 31, 2018, the Plan assets totaled approximately \$71,837,780.30. It appears that the erosion of Plan assets became more significant as of March 2018 when the Plan assets totaled approximately

\$83,238,244.35. There are several factors/changes that occurred at or about that time which would impact 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; however, the investment income is no longer providing as strong of an off-set to the monthly payment obligations for the Plan.

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 has become more critical today than it has during any other period over the past eighteen (18) months.

16. 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 Eighth 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 Ninth Interim Report which will be docketed for approximately sixty (60) days from the hearing on this Eighth 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 Ninth 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 Eighth Interim Report as if fully set forth herein.

17. In connection with the administration of the within proceeding, as of the filing of the Seventh Report on or about December 7, 2018, your Receiver had cash-on-hand totaling \$77,500.37. Since that time, your Receiver has not had any additional receipts and has had additional disbursements totaling \$8,304.97, leaving current cash-on-hand in the sum of \$69,195.40, all as set forth in the "**Schedule of Receipts and Disbursements**" attached hereto.

18. In connection with this Eighth Report, your Receiver is requesting that the Court approve the Seventh Fee Application. The Receiver's fees, costs, and expenses associated with the Seventh Fee Application and incurred for the three (3) month period from November 1, 2018 through, and including, January 31, 2019, total approximately \$90,000.00. The Receiver respectfully requests that this Court approve the Seventh Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver's Seventh Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Eighth 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.

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 Eighth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Seventh Fee Application for his services as Temporary and Permanent Receiver herein; (3) 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 Ninth Interim Report; (4) 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 (5) 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: February 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 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

3:19 PM
02/19/19
Accrual Basis

**St Joseph Health Services of RI Retirement Plan
Transactions by Account 021919
As of February 19, 2019**

Date	Num	Name	Memo	Balance
BankRI Checking Account				
12/07/2018	299	Rhodes on the Pawtuxet	Inv #1697; 12/10/18 mtg with plan participants	77,500.37
12/10/2018	300	Gina Gomes	transcript 11/2/18 hearing	76,000.37
12/12/2018	301	William White Legal Video Services	Inv #1656; video & audio for 12/10/18 meeting	75,853.37
12/18/2018	302	Gina Gomes	12/14/18 hearing transcript	75,053.37
01/29/2019	303	Relevant Discover-e	Inv #4745; copying & postage	71,024.87
02/08/2019	304	Rhodes on the Pawtuxet	Inv #1718; 2/11/19 meeting with participants	71,395.40
02/12/2019	305	William White Legal Video Services	Inv #1672; video & audio for 2/11/19 meeting	69,895.40
				69,195.40
Total BankRI Checking Account				69,195.40
TOTAL				69,195.40