

**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 EX PARTE EMERGENCY PETITION TO ENGAGE
SPECIAL LEGAL COUNSEL**

To the Honorable Providence County Superior Court, now comes Stephen F. Del Sesto, Esquire, Receiver (“Receiver”) of St. Josephs Health Services of Rhode Island Retirement Plan, as amended (hereinafter referred to as the “Plan”) and hereby 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. On or about October 27, 2017, the Court held a hearing on the appointment of Permanent Receiver. At the conclusion of the hearing, the Court entered an Order appointing the Temporary Receiver as the Permanent Receiver.

3. The Plan was established as a Rhode Island Trust to hold and distribute funds as a private retirement pension plan established by the Petitioner for the benefit of certain of its employees.

4. For at least the past 10+ years the Plan was substantially underfunded with only two (2) contributions being made between September 2008 and June 2014 (\$1.5 million and \$14 million, respectively). In addition, following a June 2014 sale of substantially all of Petitioner's operating assets, the Plan was "orphaned" with no source of funds available for regular, annual contributions into the Plan which are necessary for the Plan's long term survival.

5. Shortly after his appointment and based on the complexities and novel issues concerning the Plan and related to the Pension Benefit Guaranty Corporation ("PBGC") and the Employee Retirement Income Security Act of 1974 ("ERISA"), the Receiver determined that he required expert assistance and advice on those issues. As a result, the Receiver engaged the services of Attorney Jeffrey B. Cohen from Bailey & Ehrenberg, PLLC in Washington, DC. As the Court may recall, from 1989 through 2007, Attorney Cohen served as general counsel to the PBGC, including serving as the PBGC's Chief Counsel from 2005-2007. The knowledge, experience and guidance provided by Attorney Cohen has generally been invaluable as it relates to the Receiver's understanding of the issues related to this Plan and the PBGC and ERISA. Attorney Cohen's knowledge, experience and guidance has become even more invaluable since the Receiver's filing of the voluntary election for the Plan to be treated as an ERISA covered plan.

6. Based upon the complex and novel aspects related to this Plan, the PBGC and ERISA, the Receiver believes that the continued assistance of Attorney Cohen is warranted and necessary.

7. The Receiver has recently been advised that Attorney Cohen is transitioning from Bailey & Ehrenberg, PLLC to Tawshunsky Law Firm PLLC ("TLF"). The Receiver has confirmed that Attorney Cohen is interested in continuing his special counsel relationship with the Receiver at TLF. Further, at TLF Attorney Cohen will be joining Attorney Alan Tawshunsky who served in several senior positions at the United States Internal Revenue Service and the Treasury Department. Similar to Attorney Cohen, Attorney Tawshunsky's knowledge, expertise and guidance on PBGC, ERISA and IRS issues has been and will continue to be invaluable to the Plan.

8. As the Court is aware, although the technical engagement for Attorney Cohen's services was with Bailey & Ehrenberg, PLLC, the Receiver sought his assistance because of his personal knowledge and expertise relative to the PBGC and ERISA. Because of this and the significant value brought by Attorney Cohen to this matter since his involvement began, the Receiver believes

that continuing the relationship with Attorney Cohen and transitioning the engagement from Bailey & Ehrenberg, PLLC to TLF is in the best interests of the Plan and its participants. As a result, the Receiver requests that this Court authorize him to retain Attorney Cohen and Tawshunsky Law Firm PLLC as special counsel to the Receiver for the continued purposes outlined herein and in the attached, proposed engagement attached hereto as Exhibit A. It is important to note that the terms of the new, proposed engagement with TLF, including, without limitation, hourly rates, is consistent with the prior engagement with Bailey & Ehrenberg, PLLC.

9. Subject to the approval of this Petition by this Court, the Receiver proposes that he be permitted to continue to review and approve billing invoices from Attorney Cohen and TLF in the same manner as he had under the Bailey & Ehrenberg, PLLC engagement.

WHEREFORE, for the reasons set forth herein and for the purposes outlined herein and in Exhibit A, your Receiver respectfully requests that an Order be entered allowing your Receiver to retain Attorney Cohen and TLF to act as special legal counsel to the Receiver and Estate in accordance with the proposed engagement attached as Exhibit A.

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: April 1, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2020, 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

EXHIBIT A

TAWSHUNSKY LAW FIRM PLLC

Jeffrey B. Cohen
jeff@tawshunsky.com

Willard Office Building
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1455 Pennsylvania Ave. NW
Washington, DC 20004

Phone: 202.621.1781
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April 1, 2020

Via Email

Stephen Del Sesto, Esq.
PIERCE ATWOOD LLP
One Financial Plaza
26th Floor
Providence, RI 02903

Re: Engagement of Tawshunsky Law Firm PLLC

Dear Mr. Del Sesto:

This letter sets forth the terms and conditions of the engagement of Tawshunsky Law Firm PLLC by you in your capacity as the Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan"), Providence, R.I. Superior Court PC 2017-3856. This engagement letter will become effective April 1, 2020.

1. **Scope of Services.** Tawshunsky Law Firm PLLC will provide services with respect to the Plan's compliance with the Employee Retirement Income Security Act of 1974 ("ERISA") and the provisions of the Internal Revenue Code ("Code") relating to tax-qualified retirement plans, including but not limited to assisting the Plan's auditors in the preparation of annual filings with the relevant agencies under ERISA and the Code, correspondence, other filings and oral communications with the Internal Revenue Service ("IRS"), the U.S. Department of Labor, and the Pension Benefit Guaranty Corporation, and the drafting of any amendments to the Plan that may be necessary to obtain and maintain the Plan's tax-qualified status under the Code and to comply with ERISA.
2. **Staffing and Responsibilities.** I will be the primary attorney on this engagement. I expect to receive assistance from Alan Tawshunsky with respect to matters relating to the IRS and the Code. From time to time I may seek assistance from other firm personnel as appropriate.
3. **Fees and Billings.** My billing rate, and the billing rate for Mr. Tawshunsky, for this matter will each be \$500 per hour. (As you know, this represents a substantial discount from the rate we usually charge for such matters.) Other partners/of counsel who may work on the matter would be billed at the rate of \$400 to \$500 per hour.

Associates' rates range from \$250 to \$400 per hour. Paralegals will be billed in the range of \$75 to \$125 per hour. These rates, multiplied by the time spent on behalf of the Receiver and the Plan, measured in tenths of an hour, will be the basis for determining the fee.

All out of pocket expenses relating to this engagement will be directly billed as they are incurred. Unless other arrangements are made, we will provide you with monthly statements indicating our fees and expenses incurred in providing services to the Receiver on the Plan's behalf, and the current status of its account. Our statements include a description of work performed, fees, expenses and disbursements for the month. We reserve the right to terminate our relationship for non-payment of fees or costs.

If the terms of the engagement are acceptable to you, please sign this letter in your capacity as Receiver and return a PDF or other copy of the signed letter to me, evidencing your agreement to these terms. Please contact me anytime during the course of this engagement if you have any questions about our services, staffing, billing, or any other aspects of our engagement. We look forward to working with you.

Very truly yours,



Jeffrey B. Cohen

I have read the above and agree to the terms as set forth.

Date: _____

Stephen Del Sesto
As Receiver for the Plan