

**HEARING DATE:
Thursday, March 29, 2018 AT 9:30 AM
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 SECOND INTERIM REPORT AND
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 Second Interim Report and Request For Approval of Administrative Fees, Costs and Expenses (the "Second Report"). In support of the Second Report 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 presently 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 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.

5. Due to their day-to-day involvement with the Plan, the Receiver has 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) regarding the management and administration of the Plan. The Receiver has reviewed quarterly reports and had 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

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.

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 continues to consider all options and the related benefits regarding the ongoing day-to-day management and administration of the Plan and its assets and, if prudent, will make changes as necessary.

6. Approximately each month throughout this proceeding the Receiver hosts town-hall style, informational meetings at Rhodes on the Pawtucket 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 video records each meeting and a digital copy of the video recordings are posted to the Receiver's dedicated website.

7. As requested by the Court, the Receiver provided a formal status report to the Court on September 8, 2017. In addition to the general status, during the report the Receiver: (a) advised the Court that he had begun discussions regarding the possible engagement of Wistow, Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to assist the Receiver in investigating potential claims against third parties involved in the prior transactions involving Petitioner and pre-receivership management and administration of the Plan; (b) requested that the Court expand his powers as Temporary Receiver to include subpoena powers; and (c) requested that the Petitioner's request that benefits be adjusted on October 11, 2017 be continued until after the start of 2018. With regard to (b) and (c), the Court granted the Receiver's requests.

8. On or about October 11, 2017, the Court held a hearing on the appointment of Permanent Receiver, the Receiver's Emergency Petition to Engage Special Counsel and the Receiver's Petition for Instruction regarding Service on Bank of America and the Plan Administrator. At the hearing, the Receiver requested that the Court: (a) authorize the Receiver to engage WSL as special litigation counsel; (b) pass (i.e. not consider) the Petitioner's request for a 40% uniform reduction of benefits; (c) authorize the Receiver to formally serve the Plan's trustee and administrators; (d) add the Plan's trustee, Bank of America NA, as a nominal respondent to the matter for purposes

of notice and proper jurisdiction over the Plan; and (e) postpone the hearing on Permanent Receiver for a period of 2 weeks to effectuate the service upon the trustee and plan administrators. Following the hearing, the Court entered orders granting all the requests made by the Receiver and docketed the hearing on Permanent Receiver for October 27, 2017. In addition and also to be heard on October 27th, the Court directed the Receiver to submit to the Court a request to establish plan participant committees to assist the Receiver and Court regarding communications, benefits adjustments and similar issues.

9. On or about October 27, 2017, the Court held a hearing on the appointment of Permanent Receiver and the Committee Petition. At the conclusion of the hearing, the Court entered an Order appointing the Temporary Receiver as the Permanent Receiver. The Court also approved the Receiver's formation of the advisory committees and recognized the "middle group" as a recognized and designated group in the receivership process.

10. On or about November 20, 2017, this Honorable Court held a hearing on the Receiver's First Interim Report and Request for Approval of Fees, Costs and Expenses (the "First Report"). On or about November 29, 2017, this Court entered an Order approving the First Report and approving the Receiver's and WSL's request for fees, costs and expenses covering the period of August 18, 2017 through October 31, 2017. Although the Court approved all of the Receiver's and WSL's fees, costs and expenses incurred through the identified time period, the Court did require that twenty percent (20%) of the fees only be held in reserve pending further order of the Court. The amount of the Receiver's reserve totals \$20,577.00 and the amount of the reserve for WSL is \$21,318.75 (the "First Report Reserves"). A copy of the First Report is on file with the Clerk of the Court, accessible on the Receiver's dedicated website and is incorporated by reference and made a part of this Second Interim Report as if fully set forth herein.

11. Shortly before and since the hearing on the First Report, WSL, on behalf of the Receiver and Estate, issued subpoenas to several third parties seeking documents and information to assist in its investigative analysis. The following are among the subpoenas issued by WSL:

- a. On or about October 19, 2017, WSL served *St. Joseph Health Services of Rhode Island* ("SJHSRI") with a subpoena to provide certain documents by November 8,

2017. On or about November 2, 2017, the Office of the Attorney General responded to the subpoena issued to SJHSRI and requested that it be notified of any documents produced that are deemed confidential. SJHSRI responded on or about November 8, 2017 and stated that it was still in the process of compiling responsive documents. On or about December 3, 2017, WSL served SJHSRI with a second subpoena to provide documents concerning SJHSRI's efforts to comply with the first subpoena issued by December 15, 2017. On or about December 15, 2017, SJHSRI responded to the second subpoena, stating that it was still in the process of identifying and producing non-privileged documents. On or about December 20, 2017, WSL moved to compel SJHSRI's compliance with both subpoenas and sanctions. On or about December 31, 2017, SJHSRI objected to WSL's Motion to Compel and moved for a protective order in an attempt to expedite discovery. On or about January 3, 2018, WSL replied to SJHSRI's Objection and Counter-Motion. Ultimately, following a hearing on January 5, 2018, the Court granted the Motion to Compel and, among other things, directed SJHSRI to deliver status updates to WSL and the Court every 72 hours.

- b. On or about October 27, 2017, WSL served *Bank of America, N.A., c/o CT Corporation System* with a subpoena to provide certain documents by November 10, 2017.
- c. On or about November 2, 2017, WSL served the *Roman Catholic Bishop of Providence, c/o Eugene G. Bernardo, II, Esq., Registered Agent* (the "RCB") with a subpoena to provide certain documents by November 15, 2017. On or about November 15, 2017, the RCB wrote to WSL and objected as to the timeframe to respond, various definitions, and overall broadness of many of the requests. RCB stated that it was compiling responsive documents and would produce the same by December 4, 2017. On or about November 21, 2017, WSL filed a motion to overrule RCB's objection and compel responses. On or about December 1, 2017, RCB filed an objection to WSL's motion to overrule. Following a hearing on December 5, 2017, this Court directed the parties to confer and develop an agreed upon production schedule and schedule for the delivery of regular status reports regarding production.

- d. On or about November 3, 2017, WSL served *the Keeper of Record, Office of Attorney General* with a subpoena to provide certain documents by November 17, 2017. On or about November, 9, 2017, the Office of Attorney General and WSL met to discuss the subpoena. On or about November 16, 2017, the Office of the Attorney General partially objected to the subpoena served on November 3, 2017 on the basis that the subpoena (1) failed to allowed reasonable time for compliance, and (2) sought the disclosure of confidential and/or privileged information as it related to the Hospital Conversion Act Proceedings. On or about November 17, 2017, WSL filed a motion to overrule the Office of Attorney General's partial objection and compel responses. On or about November 27, 2017, the Office of Attorney General filed an objection to WSL's motion. On or about November 28, 2017, WSL replied to the Office of Attorney General's objection. Following a hearing on November 29, 2017, the Court granted the Motion to Compel and directed the parties to develop a plan for production of electronic documents, set a deadline of January 15, 2018, for final production and ordered the Attorney General to provide weekly status updates regarding the progress of his production.
- e. On or about December 6, 2017, WSL served *Prospect CharterCare, LLC* with a subpoena to provide documents concerning the Plan by December 18, 2017.
- f. On or about January 10, 2018, WSL served *CharterCARE Community Board* with a subpoena to provide documents concerning the Plan by January 24, 2018.
- g. On or about January 26, 2018, WSL served both *Adler Pollock & Sheehan, PC* and *Ferrucci Russo PC* each with subpoenas to provide documents concerning the Plan by February 14, 2018.
- h. On or about February 1, 2018, WSL served *CharterCARE Foundation* with a subpoena to provide documents concerning the Plan by February 15, 2018.
- i. On or about February 13, 2018, WSL served *The Rhode Island Community Foundation a/k/a Rhode Island Foundation* with a subpoena to provide documents concerning the Plan by February 28, 2018.

12. On or about November 29, 2017, this Honorable Court held a hearing on WSL's Motion to Compel the Office of Attorney General's compliance with the subpoena. The Court issued an

Order requiring that the Office of Attorney General provide weekly status updates to WSL detailing the Office of the Attorney General's efforts to comply with the subpoena served on November 3, 2017. Responsive documents were to be provided on a rolling basis, with a complete production and an appropriate privilege log by January 15, 2018. The Court also ordered the Office of Attorney General and WSL to meet and confer and attempt to develop and memorialize a plan governing the discovery of electronically stored information by December 7, 2017. Documents that were previously designated as confidential pursuant to G.L. 1956 § 23-17.14-32 were required to be produced subject to a confidentiality order.

The Office of Attorney General has filed nine (9) status reports through January 30, 2018. A copy of each status report is accessible on the Receiver's dedicated website. On or about January 16, 2018, the Office of Attorney General moved for an extension of ten days to respond to certain requests in the subpoena.

13. On or about December 5, 2017, this Honorable Court held a hearing on WSL's Motion to Compel the RCB's compliance with the subpoena. The Court ordered the parties to meet and confer in an attempt to resolve issues surrounding definitions, scope of discovery, and scheduling. The Court also required that the RCB provide weekly status updates to WSL detailing the RCB's efforts to comply with the subpoena. As directed by the Court, the parties met and conferred on or about December 8, 2017.

The RCB has filed six (6) status reports through January 16, 2018. A copy of each status report is accessible on the Receiver's dedicated website. On or about January 5, 2018, the Court entered a stipulation by and between RCB and WSL concerning the protection and exchange of responsive documents that contain personal, confidential and identifying information. In its last status report, RCB represented that production was complete and that no items remained outstanding in its response to the subpoena.

14. On or about December 7, 2017, the Office of the Attorney General submitted a proposed case management plan regarding the discovery of electronically stored information. The proposed order states that the documents shall be provided in PDF format, on a rolling basis, on or before January 15, 2018. WSL has suggested and will continue to suggest broad categories of search terms to assist in this process.

15. On or about December 13, 2017, the Office of Attorney General filed an emergency motion to establish a procedure to facilitate the clawback of privileged documents inadvertently disclosed. On or about December 15, 2017, WSL objected to the emergency motion. Also on December 15, 2017, Prospect CharterCARE, LLC (“Prospect”) moved to intervene because Prospect asserted that the Court ordered the Office of the Attorney General to produce confidential and propriety information sensitive to Prospect’s operations.

On or about December 18, 2017, this Honorable Court held a hearing on the Office of the Attorney General’s emergency motion to establish a procedure to clawback privileged documents inadvertently disclosed. The motion was denied. The Court also denied, without prejudice, WSL’s motion for attorneys’ fees stemming from the various discovery issues. On that same day, this Honorable Court held a hearing on Prospect’s motion to intervene. The motion was not opposed and granted. However, the Court denied Prospect’s motion for a protective order of certain documents.

16. On or about December 14, 2017, the Court entered a confidentiality Order restricting the disclosure of confidential information, as defined in the Order, to: (1) the Receiver; (2) WSL; (3) associates and the like of counsel; (4) consultants, experts, or investigators retained by counsel; (5) persons with prior knowledge of the confidential materials; and (6) court officials. If WSL seeks to disclose confidential information in a manner not prescribed by order of the Court, WSL may move for declassification of the document(s). Any confidential information filed with the Court shall be under seal.

17. This Honorable Court held status conferences regarding document production on or about December 21, 2017 and December 26, 2017.

18. On or about January 5, 2018, this Honorable Court held a hearing on WSL’s motion to compel SJHSRI’s compliance with the subpoenas. The Court granted WSL’s motion as it related to responsive documents requested in the first subpoena. SJHSRI was ordered to provide responsive documents by January 19, 2018 relative to this subpoena. In regard to the second subpoena, the Court reserved its decision. The Court also ordered SJHSRI to provide status updates every seventy-two (72) hours by email. A status conference was scheduled for January 22, 2018 to discuss SJHSRI’s production of documents.

On that same date, the Office of Attorney General filed a memorandum outlining the privileges it has asserted, including (1) deliberative process privilege, (2) attorney-client privilege, (3) work-product privilege, and (4) quasi-judicial privilege.

19. On or about January 10, 2018, Prospect and SJHSRI jointly moved for the entry of a protective order to govern the production of certain information to WSL. Subsequently, the Receiver, WSL and Prospect agreed to the terms of an Order which was entered by this Honorable Court on or about January 12, 2018.

20. As of February 28, 2018, the subpoenas issued by WSL resulted in the production and review of more than 663,000 pages. That number continues to grow as documents continue to be produced and reviewed.

21. To the best of the Receiver's knowledge, the following groups have formally organized based on certain criteria and/or similar view points: (1) United Nurses and Allied Professionals; (2) a group represented by Attorneys Arlene Violet and Robert Senville; and (3) a group that identifies as "One Group St. Joseph". The Receiver did not assist in the formation of these groups. Collectively, these groups represent approximately 750 Plan participants. Notice of these groups, with contact information, was provided to all Plan participants on or about January 10, 2018.

22. On or about February 22, 2018, the Receiver filed his Initial Recommendation Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Relative to the Processing of Pending Benefit Elections and Properly Filed Applications for Benefits (the "Recommendation"). A hearing on the Recommendation, originally scheduled for March 2, 2018, has been rescheduled to be heard on March 29, 2018. A copy of the Recommendation is on file with the Clerk of the Court, accessible on the Receiver's dedicated website and is incorporated by reference and made a part of this Second Interim Report as if fully set forth herein.

23. In addition to the above, the Receiver continues to receive and review documents related to the Plan and its history and explore options related to the ongoing management, investment and administration of the Plan. The Receiver is also reviewing and analyzing financial data relative to

the possible benefits adjustment scenarios in an effort to identify the most equitable, interim adjustment while the investigation of third parties progresses.

24. In connection with the administration of the within proceeding, as of the filing of the First Report, your Receiver had cash-on-hand totaling **\$629,757.69**. Since that time, your Receiver has not had any additional receipts and has had additional disbursements totaling **\$255,245.62**, leaving current cash-on-hand in the sum of **\$374,512.07**, all as set forth in the “**Schedule of Receipts and Disbursements**” attached hereto.

25. In connection with this Second Report, your Receiver is requesting that the Court approve the Receiver’s fees, costs, and expenses incurred from November 1, 2017 through, and including, February 28, 2018, and authorize him to pay himself such fees from the available cash-on-hand. A copy of your Receiver’s Second Interim Fee Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Second Report. In addition, your Receiver is requesting that the Court authorize him to pay WSL’s fees, costs and expenses incurred through February 28, 2018. A copy of WSL’s fee invoices will also be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Second Report. Due to the potential for litigation in this matter and the related description 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.

In addition to the fees, costs and expenses incurred and requested in connection with this Second Report, the Receiver respectfully requests that this Court authorize the Receiver to release and disburse the First Report Reserves to himself and WSL.

WHEREFORE, your Receiver prays that: (1) all of his acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Second Report be approved, confirmed and ratified; (2) the Receiver be awarded a Second Interim Allowance for his services as Temporary and Permanent Receiver herein, plus his costs and expenses; (3) the Receiver be authorized to satisfy the fees, costs and expenses incurred by WSL; (4) the Receiver be authorized to release and disburse the First Report Reserves; (5) this proceeding remain open pending final

resolution of all the issues identified herein and the general winding down of the receivership Estate; and (6) 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: March 16, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2018, 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

St Joseph Health Services of RI Retirement Plan

Transactions by Account

As of March 16, 2018

11:43 AM
03/16/18
Accrual Basis

Date	Num	Name	Memo	Debit	Credit	Balance
BankRI Checking Account						
11/14/2017	208	Relevant Discover-e	invoice #2326; 11/14/17		1,472.62	629,757.69
11/15/2017	209	William White Legal Video Services	invoice #1527; 11/7/17 mtg video		500.00	628,285.07
11/16/2017	210	Relevant Discover-e	postage for 11/16/17 mailing Notice of Perm Receiver & 12/4 Mtg		1,329.86	626,455.21
11/20/2017	211	Relevant Discover-e	11/16 mailing, 11/20 mailing & 11/20 postage		7,759.87	618,695.34
11/29/2017	212	ATR Treehouse	audio for 12/4/17 meeting		978.09	617,717.25
11/29/2017	213	Rhodes on the Pawtuxet	12/4/17 meeting with plan participants		2,200.20	615,517.05
11/29/2017	214	Donoghue Barrett & Singal, PC	fees & costs in full 8/18/17 - 9/8/17		28,127.93	587,389.12
11/30/2017	215	Wistow Sheehan & Loveley, PC	1st interim out-of-pocket costs in full		31,031.67	556,357.45
11/30/2017	216	Wistow Sheehan & Loveley, PC	1st interim fees thru 10/31/17 less 20% court ordered holdback		85,275.00	471,082.45
11/30/2017	217	Pierce Atwood LLP	1st interim costs in full		6,354.15	464,728.30
11/30/2017	218	Pierce Atwood LLP	1st interim fees thru 10/31/17 less 20% court ordered holdback		56,823.00	407,905.30
12/04/2017	219	Gina Gomes	11/20/17 hearing transcript		60.00	407,845.30
12/06/2017	220	William White Legal Video Services	invoice #1528; 12/4/17 mtg video		500.00	407,345.30
12/15/2017	221	Gina Gomes	12/5/17 hearing transcript		114.00	407,231.30
12/15/2017	222	Jennifer Millette	11/29/17 hearing transcript		354.00	406,877.30
01/03/2018	223	WhaleRock Point Partners, LLC	Inv #101; 11,16,17-12,15,17		7,500.00	399,377.30
01/05/2018	224	Gina Gomes	12/18/17 hearing transcript		150.75	399,226.55
01/09/2018	225	Gina Gomes	1/5/18 Mtn to Compel & 4/6/15 CY Pres hearing transcripts		267.00	398,959.55
01/12/2018	226	Relevant Discover-e	invoice #2594; postage		1,329.86	397,629.69
01/16/2018	227	Relevant Discover-e	1/15/18 mailing		1,954.86	395,674.83
01/29/2018	228	ATR Treehouse	audio for 1/29/18 meeting		978.09	394,696.74
01/29/2018	229	Rhodes on the Pawtuxet	VOID: 1/29/18 meeting with plan participants	0.00		394,696.74
01/31/2018	230	Rhodes on the Pawtuxet	1/29/18 meeting with plan participants		1,710.72	392,986.02
02/02/2018	231	William White Legal Video Services	invoice #1546; 1/29/18 meeting video		500.00	392,486.02
02/06/2018	232	WhaleRock Point Partners, LLC	Inv #102; 12,16,17-1,15,18		7,500.00	384,986.02
02/06/2018	233	Bailey & Ehrenberg PLLC	Inv# 2553; Jan fees for consulting expert		4,620.00	380,366.02
02/23/2018	234	Relevant Discover-e	Inv #s 2840 & 2841; 2/22/18 copying and postage		3,055.14	377,310.88
03/05/2018	235	Rhodes on the Pawtuxet	3/5/18 meeting with plan participants; inv #1587		1,710.72	375,600.16
03/06/2018	236	William White Legal Video Services	Invoice #1557; 3/5/18 meeting video		350.00	375,250.16
03/07/2018	237	ATR Treehouse	audio for 3/5/18 meeting		738.09	374,512.07
Total BankRI Checking Account						
				0.00	255,245.62	374,512.07
TOTAL						
				0.00	255,245.62	374,512.07