

**HEARING DATE:
TUESDAY, OCTOBER 20, 2020 AT 10:00 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 FIFTEENTH INTERIM REPORT AND FOURTEENTH 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 Fifteenth Interim Report (the "Fifteenth Report") and Fourteenth Interim Request for Approval of Fees, Costs and Expenses (the "Fourteenth Fee Application"). In support of the Fifteenth Report and Fourteenth 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. Based on the benefits payments issued by Bank of America as of October 1, 2020, 1,494 participants are currently receiving monthly benefits payments. The total amount of benefits paid in October 2020 equaled \$954,398.44.

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 and is updated regularly to include access to filings made in both the State and Federal litigation matters as well as other related litigation and liquidating receivership 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

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.

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 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 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. Prior to the COVID pandemic, approximately every 4-6 weeks throughout this proceeding the Receiver hosted "town-hall" style, informational meetings at Rhodes on the Pawtuxet in Cranston, Rhode Island. At these meetings the Receiver provided 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 and available for unrestricted viewing.

Due to the State gathering restrictions imposed by the Governor during the pandemic and in order to provide pension holders with information, the Receiver has moved from an in-person to virtual via Zoom town hall meeting format. The Receiver has conduct two (2) meetings under this format and will continue every 4-6 weeks until in-person gatherings are safe again.

7. Prior to this Fifteenth Report and Fourteenth Request for Approval of Fees, the Receiver has filed fourteen (14) prior reports with the Court and thirteen (13) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Fourteenth 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 Fifteenth Interim Report as if fully set forth herein.

8. 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.

9. On August 25, 2020, this Court held a virtual hearing via WebEx on the Receiver’s Fourteenth Interim Report (the “Fourteenth Report”) and Thirteenth Interim Request for Approval of Fees, Costs and Expenses (the “Thirteenth Fee Request”). Upon conclusion of the hearing, the Court approved the Fourteenth Report and the Thirteenth Fee Request.

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

- a. On or about September 29, 2020, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc. and Prospect CharterCare, LLC (the “Prospect Entities”) filed a Motion seeking to adjudge the Receiver in Contempt of this Court’s November 16, 2018, Order and for an Award of Attorneys’ Fees (the “Motion”). In their Motion, the Prospect Entities assert that the Receiver was required to provide twenty (20) days notice to the Prospect Entities prior to implementing or directing CharterCare

Community Board (“CCCB”) (now controlled by the Liquidating Receiver) any rights related to CCCB’s 15% interest in Prospect CharterCare LLC.

- b. On October 6, 2020, the Receiver filed an Objection to the Motion along with several supporting Affidavits.
- c. The hearing on the Motion and the Receiver’s Objection was continued and is currently scheduled for October 28, 2020.

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

- a. On or about September 1, 2020, the Receiver and other Plaintiffs filed a Response to the Prospect Entities Defendants' Statement of Undisputed Material Facts; and
- b. Also on September 1, 2020, the Receiver and other Plaintiffs filed a Reply to the Prospect Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment on Count IV of the First Amended Complaint.

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

- a. On or about August 28, 2020, the Liquidating Receiver filed an Objection to JP Morgan Chase Bank’s Motion to Dismiss the Complaint against it (the “MTD Objection”);
- b. On or about September 14, 2020, JP Morgan filed a Reply Memorandum in further support of its Motion to Dismiss;
- c. On or about September 21, 2020, the Court conducted a hearing on JP Morgan Chase Bank’s Motion to Dismiss and the Liquidating Receiver’s Objection thereto. At the conclusion of the hearing the Court reserved its decision;
- d. On or about October 1, 2020, the Liquidating Receiver filed an Objection to Green Equity Investors V, LP and Green Equity Investors Side V, LLP’s Motion to Dismiss (the “Green MTD”);
- e. The hearing on the Green MTD and the Receiver’s Objection was continued and is currently scheduled for November 13, 2020, at 9:30am.

13. Since the filing of and hearing on the Fourteenth Report, the following events have occurred in the Liquidating Receivership:

- a. On or about September 4, 2020, the Liquidating Receiver filed his Second Interim Report. Following a hearing on September 21, 2020, on the Second Interim Report, on October 2, 2020, the Court entered an Order approving the Second Interim Report;
- b. On or about September 11, 2020, your Receiver and the Liquidating Receiver (collectively the “Receivers”) filed a Fourth Supplement to their Memorandum in support of their Motion seeking an order enjoining Adler Pollock & Sheehan PC (“AP&S”) and its attorneys from (a) representing the Prospect Entities in matters relating to the Change in Effective Control proceedings pending before the Rhode Island Department of Health and the Hospital Conversion Act proceedings pending before the Attorney General; and from (b) sharing their knowledge or work product with the Prospect Entities or successor counsel (the “AP&S Motion”). On or about July 27, 2020, the Receivers filed a Supplement to the AP&S Motion;
- c. On September 17, 2020, the Court held a hearing on the Receivers’ Motion and AP&S’s and the Prospect Entities’ Objection thereto. Following the hearing, the Court requested supplemental briefing from the parties;
- d. On or about September 23, 2020, the Receivers filed a Post-Hearing Memorandum of Law in Support of their Motion seeking an order enjoining AP&S;
- e. Also on or about September 23, 2020, AP&S and the Prospect Entities submitted their Second Supplemental Memorandum in support of their Objection to the Receivers’ Motion seeking an order enjoining AP&S; and
- f. On or about September 28, 2020, the Receivers filed a Response to AP&S’s and the Prospect Entities’ Epistolary (Letter) Reply Brief.

14. Your Receiver, along with the Liquidating Receiver and several other parties have filed formal objections to the Prospect Entities and related entities and individuals’ application for a Change in Effective Control pending before the Rhode Island Health Services Council (“RIHSC”). Despite the Receiver’s and Liquidating Receiver’s Objections submitted to the RIHSC and the pending Motion seeking to enjoin AP&S, the RIHSC permitted the initial hearing to proceed with

AP&S as counsel rather than wait for this Court's ruling on the Motion. Ultimately, the application will be presented to the Rhode Island Department of Health and Rhode Island Department of the Attorney General under the Rhode Island Hospital Conversion Act.

15. Although your Receiver and some of the litigation defendants have engaged in general settlement discussions, no proposed settlements have been reached since the Federal Court's final approval of the CCCB and CCF Settlements which resulted in a \$13,112,826.40 NET benefit to the Plan.

16. 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.

17. The Receiver continues to receive and review documents related to the Plan and its history. The Receiver and GRS, the Receiver's Plan actuary, are fully engaged regarding benefits administration of the Plan and address multiple inquiries, applications, and questions on a daily basis.

18. With regard to Plan assets, since the inception of this proceeding in August 2017, the Plan assets (without the inclusion of the Settlement A and Settlement B proceeds) have reduced by approximately twenty-six percent (26%). As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In months since (as of July 31, 2020), the Plan assets totaled approximately \$60,440,766.00.² The largest factor in the reduction

² This amount does not include the Settlement "A" or Settlement "B" NET settlement proceeds discussed in Paragraph 15, above.

of the Plan assets is monthly benefit payments. It is important to note that during the months since the inception of this proceeding the Plan paid out monthly benefit payments, retroactive benefit payments and other payments and fees related to Plan maintenance and services at an average rate of approximately \$950,000 per month.

To add to the volatility of the investments, the COVID pandemic had a dramatic impact on the market. However, during the prior year in an effort to protect and insulate the Plan from dramatic market fluctuations, the Receiver adjusted the allocation of assets for investment risk. This reallocation was somewhat successful in insulating the Plan from COVID related losses in that when the market was down almost 25%, the Plan investments were only down approximately 10% during that same period. The Receiver and the investment manager continue to regularly assess the allocation of investments so as to maximize the returns for the Plan while at the same time protecting it based on its status and unavoidable fluctuations of the markets.

19. In connection with the administration of the within proceeding, as of the filing of the Fourteenth Report on or about August 19, 2020, your Receiver had cash-on-hand totaling \$3,547,961.74. Since that time, your Receiver has had no additional receipts and has had additional disbursements totaling \$23,629.12, leaving current cash-on-hand in the sum of \$3,524,332.62, all as set forth in the **“Schedule of Receipts and Disbursements”** attached hereto.³

20. In connection with this Fifteenth Report, your Receiver is requesting that the Court approve the Fourteenth Fee Application incurred for the three and one-half (3 ½) month period from August 1, 2020, through, and including, September 30, 2020, totaling approximately \$65,000. The Receiver respectfully requests that this Court approve the Fourteenth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver's Fourteenth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Fifteenth Report. Due to the Litigation and the related descriptions and narratives in time entries, to avoid any potential disclosure, strategy,

³ Cash-on-hand includes the funds received from Settlement “B”. The Receiver will be filing a Petition for Instructions in the coming weeks seeking instruction from the Court regarding the deposit of those funds into the Plan.

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 Fifteenth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Fourteenth Fee Application for his services as Temporary and Permanent Receiver herein; (3) 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 (4) 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

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Providence, RI 02903

Tel: 401-490-3415

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Dated: October 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 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

SCHEDULE OF RECEIPTS AND DISBURSEMENTS

11:13 AM

St Joseph Health Services of RI Retirement Plan
Transactions by Account 101420
As of October 14, 2020

10/14/20

Accrual Basis

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
BankRI Checking Account						
08/31/2020	354	Gina Gomes	5/22/20 & 6/1/20 hearing transcripts		69.00	3,547,961.74
09/02/2020	355	Wistow Sheehan & Loveley, PC	out of pocket expenses thru 8/31/20		20,180.05	3,547,892.74
09/14/2020	356	Gina Gomes	8/25/20 hearing transcript		36.00	3,527,712.69
09/25/2020	357	Relevant Discover-e	Inv #7551; copying & postage notice of meeting		3,344.07	3,527,676.69
Total BankRI Checking Account				0.00	23,629.12	3,524,332.62
TOTAL				0.00	23,629.12	3,524,332.62