

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF )  
RHODE ISLAND )

VS. )

C.A. NO. PC-2017-3856 )

ST. JOSEPH'S HEALTH SERVICES OF )  
RHODE ISLAND RETIREMENT PLAN )

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON JULY 26, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER  
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL

GINA GIANFRANCESCO GOMES  
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 19, inclusive, are a true and accurate transcript of my stenographic notes.

  
GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 THURSDAY, JULY 26, 2018

2 MORNING SESSION

3 THE COURT: Madam Clerk, if you'd please call the  
4 case.

5 THE CLERK: Your Honor, the matter before Court is  
6 PC-2017-3856, St. Joseph Health Services of Rhode Island  
7 vs. St. Joseph Health Services of Rhode Island Retirement  
8 Plan. This is on for the Receiver's fifth interim and  
9 request for fees. Would counsel please identify  
10 themselves for the record.

11 MR. DEL SESTO: Good morning, your Honor. Stephen  
12 Del Sesto, Court-Appointed Receiver.

13 MR. WISTOW: Max Wistow, Special Counsel.

14 THE COURT: Good morning. The Court has received  
15 and reviewed the Receiver's fifth interim report as well  
16 as the fees submitted for an in-camera review. The Court  
17 had the opportunity to review them last evening.  
18 Counsel, you may proceed.

19 MR. DEL SESTO: Thank you, your Honor. Your Honor,  
20 we are here this morning on the Receiver's fifth interim  
21 report and the fourth interim request for fees. I was  
22 last before your Honor on June 28th on the fourth interim  
23 report. There was no fee request associated with it  
24 which is why there's a discrepancy between the report and  
25 the fee application. As your Honor recalls, the fourth

1 interim report was unplanned, but because of the filing  
2 of the lawsuits by Special Counsel in both the Federal  
3 and State court, we felt it was important to provide the  
4 Court with a more contemporaneous update before the  
5 filing of the lawsuits, so we have about a month's worth  
6 of activity that has happened since the last report.

7 In addition, your Honor, I am going to obviously go  
8 over the events, comings and goings in the past month.  
9 We do have an issue that propped up yesterday, which I  
10 would like to address the Court, but I will do that at  
11 the end of the report.

12 As stated, we were here on the fourth interim report  
13 on June 28th. Since then with regard to the general  
14 administration of the estate, I have fully engaged the  
15 actuarial firm of Gabriel Roder. I'll refer to them as  
16 G.R.S. I can't remember as I stand here the S, but  
17 G.R.S. is the actuarial firm. They have agreed to step  
18 in as the plan's actuary and a term that is identifiable  
19 as a benefits administrator. What that means is they  
20 will perform the administrator functions of the plan  
21 including the valuation of processing of applications,  
22 the production of election forms and dissemination of  
23 those, all administration functions, change of address,  
24 change of beneficiary, things like that, for the  
25 participants who are actively in the plan right now

1 collecting money. They will also be in close contact  
2 with Bank of America, who sends out the payments on a  
3 monthly basis and Mercer Investments, who is the  
4 investment advisor. I am happy to say they have a very  
5 large firm. I think the Court is familiar with them, and  
6 I'm happy to say that the pricing that they gave me -- I  
7 had spoken to three different actuarial firms and G.R.S.  
8 was substantially better than the other two that I had  
9 spoken to, and, essentially, matched the costs and  
10 expense that the plan was incurring with regard to those  
11 services. They even had, for example, a setup fee that  
12 they customarily charge of \$20,000, which they waived in  
13 this case to help with this plan under these  
14 circumstances.

15 In addition to that, your Honor, the Special Counsel  
16 and the other parties to the litigation there have been  
17 stipulations that have been entered. For example, a  
18 stipulation of the parties in the State court action has  
19 been entered basically agreeing to a stay of that action.  
20 There has been a stipulation in the Federal court action  
21 as to answers. I believe August 14th is the date that  
22 answers will be due, and other stipulations I will call  
23 it of an administrative nature. So Special Counsel and  
24 the Defendants have all been talking about the procedural  
25 aspects of that case and how its proceeding. As far as

1 I'm aware there is no Rule 16 conference yet scheduled,  
2 but, obviously, if Special Counsel has information that I  
3 am not aware of, he can correct that on the record, your  
4 Honor.

5 Beyond that, your Honor, those cases are proceeding.  
6 I don't want to get into the substance of what's going on  
7 for obvious reasons related to both. I believe with  
8 regard to the cy pres action, there has been a scheduling  
9 order put in place that your Honor is aware of, and  
10 Special Counsel will have the opportunity to respond to  
11 any objections to the motion to intervene in accordance  
12 with that schedule.

13 Beyond that, your Honor, we continue to monitor. I  
14 have a meeting scheduled with Mercer for early in August,  
15 a face-to-face meeting. They are coming up from St.  
16 Louis so we can discuss the plan, the investment  
17 structure, things of that nature. I remain in contact  
18 for the Bank of America, who is the non-discretion  
19 trustee of the assets, and I continue to communicate with  
20 the pension holders. We meet on a monthly basis still at  
21 the Rhodes on the Pawtuxet. In addition, I respond to  
22 various phone calls -- me or my staff respond to various  
23 phone calls and e-mails.

24 I am happy to say since the litigation that has been  
25 filed, with the exception of one matter that I will raise

1 in a few seconds, things have been relatively quiet from  
2 an administrative standpoint. I can say that it's my  
3 understanding that the pension holders hopefully through  
4 the website, the meetings, and what not, have been kept  
5 as informed as they possibly could be of the goings on in  
6 this case. I try to make myself and my team as  
7 accessible as possible for that purpose and it seems to  
8 be the feeling by the pension holders that I have spoken  
9 to that they feel for the first time in a long time they  
10 finally have an understanding of what is happening and I  
11 am provided with a regular update of that, not only in  
12 these reports but through the website and the meetings.  
13 Unless the Court has any questions.

14 THE COURT: Just in terms of the last report, the  
15 discussion in terms of is there any type of uptake in  
16 payments going out and where do we stand in terms of  
17 pending applications? I know we opened it up for people  
18 to file.

19 MR. DEL SESTO: That's correct. During I'll call it  
20 the stay portion of the application processing we were  
21 paying out approximately \$850,000 a month. Based on the  
22 processing of applications, which the Court permitted  
23 those to be processed as of the end of March, so that  
24 began the beginning of April, the expense of the estate  
25 has increased by about \$100,000 per month, maybe a little

1 bit more. The initial first round of payments based on  
2 those applications being processed showed a much higher  
3 uptake because there was some retroactive money that was  
4 due, but, generally, it's about \$950,000 a month right  
5 now.

6 In connection with the issue that I'm going to  
7 discuss with the Court on Angell --

8 THE COURT: Why don't we address it in the contents  
9 of that. It sounds like, you raised it a few times, it's  
10 an issue you want to address.

11 MR. DEL SESTO: So Angell Pension Group, who had  
12 been engaged by St. Joseph's Health Services of Rhode  
13 Island to be the actuary for the plan, and to be --  
14 again, the term I'll use is benefits administrator. They  
15 handle all the administrative operations. For obvious  
16 reasons, although I won't state them right now, we sued  
17 them both in Federal and State court. I felt and Special  
18 Counsel felt, that it was in the best interest of  
19 everybody that they be removed as the plan actuary  
20 benefits administrator. Hence, the reason why I engaged  
21 G.R.S. to step in and perform those functions.

22 In response to the letter advising Angell of the  
23 change, and in that letter I advised them G.R.S. needs  
24 thirty days, although I am not bound because I am not St.  
25 Joseph's Health Services of Rhode Island. I am the



1 retirement plan and the Receiver for that plan. As a  
2 courtesy, I gave the same thirty days that that agreement  
3 provides in terms of termination of their services and  
4 asked them that I hoped and expected that they would  
5 cooperate and coordinate with G.R.S., the quarterly  
6 transfer of information so that G.R.S. would be on line  
7 as of August 1st in performing all of those functions for  
8 the plan. In response to that letter yesterday morning,  
9 I received a letter from --

10 THE COURT: When was that original letter?

11 MR. DEL SESTO: That was on July 17th, your Honor.

12 THE COURT: Okay.

13 MR. DEL SESTO: So in response to that letter  
14 yesterday morning I received a letter from  
15 Angell, not their counsel but the point person that I had  
16 been dealing with up to that point, Peter Karlsen,  
17 K-A-R-L-S-E-N. And, essentially, Mr. Karlsen indicated  
18 that Angell Pension did not have any desire to continue  
19 functioning, did not wish to cooperate with my request,  
20 and, basically, stated that unless we dropped the lawsuit  
21 and agreed to indemnify them as to the contract that they  
22 had that St. Joseph's Services provides that they would  
23 not be providing any information and assisting in any way  
24 going forward effective immediately.

25 Shortly after that letter, about four hours later, I

1 received a second communication from Angell, which put in  
2 my mailbox twenty-five applications that were pending but  
3 had not yet been processed. The latest one was as of  
4 April 3rd and there were some much more recent than that  
5 and then approximately twenty-five to thirty  
6 administrative forms, change of address, change of banks,  
7 change of direct deposits, things of that nature.  
8 Basically saying here is what has been left open, here is  
9 what we have not done yet, it's now your responsibility  
10 to take care of this and we will provide you this  
11 information every two weeks as we receive it.

12 Obviously, that's a position that I am not happy to  
13 be put in. It's my opinion based on my reading of that  
14 letter that Angell is merely using the plan and their  
15 participants as leverage to try to get some advantage or  
16 dismissal of the lawsuit. I have drafted a letter in  
17 response which I expect to go out today. There were  
18 issues raised about the litigation so I asked Special  
19 Counsel to review that letter and supplement as he  
20 believes may be necessary with regard to the litigation  
21 piece.

22 I want to be clear both to the Court and I am going  
23 to make it clear in the letter in response that the issue  
24 that they are raising is an issue that is dealing with  
25 the administration of this estate and that their response

1 is interfering with that administration of the estate.  
2 As I stated to them, the thing I am most concerned about  
3 is I do not want there to be an impact on the pension  
4 holders as a result of the change from Angell to G.R.S.  
5 Based on their position, it seems to me that it is  
6 inevitable that there will be an impact because between  
7 now and the time that G.R.S. is fully engaged, and when I  
8 say fully engaged, I mean they need the information from  
9 Angell in order to do their job. As of right now they  
10 don't have anything from Angell. They have information  
11 that I provided and that I received from Angell, but  
12 there is more detailed data regarding the history of each  
13 one of these planned participants relative to their  
14 employment and things of that nature that is absolutely  
15 essential to allow those applications to be filed. That  
16 is the data that is used to determine what their benefit  
17 actually is.

18 So I'm concerned this will cause a disruption in  
19 that. I am hopeful that letter will go to Angell today  
20 and we will ask them by the close of business today to  
21 confirm the April 1st deposition. If not, I told them  
22 that I will do whatever I can with this Court's  
23 permission to hold them accountable, compel them to  
24 provide the information, which is the information that is  
25 the plan's information, and that would include a motion

1 to compel. I would possibly seek contempt against them,  
2 sanctions. And I've also advised with this Court's  
3 authority I will report them to the disciplinary board  
4 for actuaries. That's the most recent piece of  
5 information that has come up in response to your question  
6 earlier.

7 THE COURT: Before we get to that, does Angell have  
8 counsel in this proceeding?

9 MR. DEL SESTO: They do not have counsel in the  
10 receivership matter. They have engaged local counsel in  
11 the State court litigation action. They have engaged, I  
12 believe, out-of-state counsel that is going to appear on  
13 their behalf in the Federal matter and I don't believe  
14 they are involved in the cy pres.

15 THE COURT: We're not dealing with the State  
16 litigation or the Federal litigation. We're dealing with  
17 the administration and receivership. The answer is  
18 Angell has not entered an appearance?

19 MR. DEL SESTO: Not in this case.

20 THE COURT: What about the person Karlsen? Is he a  
21 Rhode Island licensed attorney?

22 MR. DEL SESTO: He is an attorney. I have not  
23 checked the Rhode Island Bar Association.

24 THE COURT: Okay. Check and let me know.

25 MR. DEL SESTO: I will, your Honor.

1 THE COURT: So, basically, you got a letter from  
2 Angell, in my words summing it up, saying we're not going  
3 to cooperate with the transition unless you drop the  
4 lawsuit?

5 MR. DEL SESTO: Essentially, that's correct, your  
6 Honor.

7 THE COURT: Okay. I understand you're going to send  
8 a letter out hopefully today and I would also ask that  
9 you inquire of Angell if they have counsel who is going  
10 to enter an appearance in the receivership proceeding.  
11 Again, I have the Receiver's representations of the  
12 letter at this point. I don't know if there is another  
13 side. Certainly where this is going if there is not  
14 cooperation as far as the plan participant data this will  
15 end up very quickly on an emergency basis before this  
16 Court. So I want to be clear -- if the Court can have a  
17 copy of the letter and counsel can find out whoever  
18 signed the letter. I don't know whether they signed it  
19 as counsel or an employee or whatever else. We need to  
20 know who we're dealing with at this point. What you're  
21 representing to the Court is extremely concerning.

22 MR. DEL SESTO: It is, your Honor, and I will get  
23 that letter over to you, and, hopefully, we will clear up  
24 all of the questions in addition to whether or not Mr.  
25 Karlsen is licensed in the State of Rhode Island.

1 THE COURT: Counsel.

2 MR. WISTOW: In apropo of the letter, a copy was  
3 sent to Mr. Boyajian, who is local counsel in the  
4 lawsuits, and who I have spoken to, not on this subject  
5 matter. This just happened yesterday. I have spoken to  
6 out-of-state counsel. And I'm wondering, it's up to the  
7 Receiver and the Court, if I should perhaps give a call  
8 to those lawyers and tell them this is an emergent  
9 situation.

10 THE COURT: I would suggest absolutely. The more we  
11 can do to get the attention of Angell's counsel. Again,  
12 I don't know whether this came in house from an employee  
13 there, whether counsel was consulted. Again, anything we  
14 can avoid to go down the path of wasting the Court's time  
15 and dealing with any issues of participants, I strongly  
16 encourage it.

17 MR. DEL SESTO: Thank you, your Honor. So I guess  
18 in response to your question as to applications pending,  
19 I'm going to assume that the e-mail I received yesterday,  
20 which included twenty-five applications, is the universe  
21 of the applications that remain to be processed. I've  
22 looked at those. It's very difficult for me to tell,  
23 based on the information that I have been provided, as to  
24 whether or not, for example, an application that is dated  
25 April 3rd, whether or not that was received on April 3rd

1 or whether it was received at some time prior. But it  
2 appears from that e-mail that there are about twenty-five  
3 applications as of yesterday that have not been  
4 processed.

5 THE COURT: And what about the August 1st date you  
6 were talking about for G.R.S. taking over, was that based  
7 on the receipt of certain information?

8 MR. DEL SESTO: Yes, it was.

9 THE COURT: It sounds like that date is in jeopardy  
10 at this point.

11 MR. DEL SESTO: It may be. Although, G.R.S., I had  
12 multiple conversations with them. I can say they were  
13 very very responsive yesterday, and in the course of  
14 those conversations they did indicate, for example, I  
15 have a list of pension participants based on this case  
16 and providing notice, they can start doing some of the  
17 work in terms of notification to the pension holders with  
18 that list. So I am providing them with that list. I am  
19 providing them with all of the information that I have  
20 from Angell. But, again, one piece of information I do  
21 not have that will be critical for benefit application  
22 assessment and analysis is the historical data for these  
23 pension participants in terms of their employment. So to  
24 the extent we receive any application, not only the  
25 twenty-five that I received yesterday, but any going

1 forward, it will be very very difficult and slow moving  
2 for G.R.S. to do that work because, essentially, we will  
3 have to contact the hospital directly and see if they  
4 have the documentation and hopefully that documentation  
5 will be complete and accurate. That does cause a problem  
6 for us. Although G.R.S. can get into the process very  
7 quickly with some of the information, there is definitely  
8 large pieces of critical information that will not allow  
9 them to do their job.

10 THE COURT: Okay. Let's see where we are. As I  
11 said, if we're dealing with pension holder information  
12 and history, which we need to transfer over to G.R.S.,  
13 this is emergent as far as the Court is concerned. I  
14 will waive the regular notice requirements and let's  
15 schedule a hearing as soon as possible.

16 MR. DEL SESTO: Hopefully, your Honor, I will get a  
17 positive response.

18 THE COURT: Otherwise, I am open tomorrow.

19 MR. DEL SESTO: Okay.

20 THE COURT: Thank you very much.

21 MR. DEL SESTO: Thank you. I appreciate that.

22 Unless you Honor has any other questions with respect to  
23 the report portion, I can move over to the fee's portion.

24 THE COURT: That's fine.

25 MR. DEL SESTO: Your Honor, this is the fourth



1 request for fees. I have provided invoices to your Honor  
2 both from the Special Counsel and myself in redacted  
3 form. The fees for the Receiver span the period of May  
4 1st through June 30th. Fees for Special Counsel span May  
5 1st through June 17th. As your Honor may recall, under  
6 the terms of the engagement with Special Counsel once the  
7 lawsuits were filed it moves over to a contingency-based  
8 structure, although the estate will still continue to pay  
9 those out-of-pocket expenses, reimburse Special Counsel  
10 for those out-of-pocket expenses. For the time period of  
11 May 1st through June 17th Special Counsel has fees in the  
12 amount of \$108,750 and hard expenses totaling \$10,223.76,  
13 for a total of \$118,973.76. For the period of May 1st  
14 through June 30th the Receiver has fees and expenses  
15 totalling \$62,000 and hard expenses of \$29.61, for a  
16 total of \$62,029.61. And in connection with this report,  
17 I am asking that the Court approve the fees for the  
18 Special Counsel as well as for the Receiver and authorize  
19 me to make payments from the estate fund which are  
20 approximately \$300,000 at this point. Actually, I can  
21 gave you the exact amount, your Honor.

22 THE COURT: If I can clarify, \$108,750 that's --

23 MR. DEL SESTO: That's fees only.

24 THE COURT: Of the Special Master?

25 MR. DEL SESTO: Of Special Counsel. Special Counsel

1 has fees of \$108,750.

2 THE COURT: That's fine. The documents which were  
3 the Special Master's fees that I reviewed last evening  
4 was the other amount. I just wanted to make sure.

5 MR. DEL SESTO: That's correct. So I am asking  
6 approval and authorization to pay those. I have  
7 approximately \$360,000 in the estate, so there are  
8 sufficient funds to pay those, and I am asking for  
9 authorization. Generally speaking, your Honor in  
10 connection with today's hearing, I am asking for the  
11 Court to confirm, approve, and ratify my acts and doings  
12 as of the fifth interim report and approve the payment of  
13 fees, costs, and expenses of the Special Counsel and the  
14 Receiver, and to keep the matter open pending further  
15 order of this Court.

16 There is one matter I did forget to mention to your  
17 Honor. We had deferred until today a recommendation on  
18 the adjustment of benefits for the reasons stated in my  
19 original recommendation back in March. I am asking that  
20 the Court continue to further defer a recommendation on  
21 that until at least the sixth interim report which we  
22 will schedule for approximately sixty days from today.

23 THE COURT: Very good. So the deferral portion is  
24 granted. Before I rule I would like to give Special  
25 Counsel if he wishes the opportunity to be heard.

1 MR. WISTOW: Thank you, your Honor. Just very  
2 briefly, as your Honor is aware, there will be no more  
3 application for fees from Special Counsel as we converted  
4 to contingency. I wanted to add a couple of really minor  
5 points to bring everybody up to date of the timing of the  
6 Federal lawsuit, it's correct there is no Rule 16  
7 conference that has been set up, but we've just heard  
8 from the Court that we are going to have a conference  
9 this Monday, July 30th, because there are fourteen  
10 defendants and they have all been in touch with me saying  
11 each one will be filing a motion to dismiss and they want  
12 more time yet than they have had, and, obviously, this is  
13 something, as your Honor knows, in the Federal court we  
14 can't agree to continuances beyond thirty days. So we're  
15 going to have a meeting with the court and try to work  
16 out a schedule for the responses by the Defendants and  
17 the time for us to reply and presumably we'll have a  
18 discussion about the Rule 16 conference.

19 The only other minor issue is in the cy pres  
20 proceeding that is pending before your Honor, your Honor  
21 has entered an order regarding the stay of withholding  
22 money of approximately \$8.7 million pending the various  
23 other lawsuits, and in that order there is also a time  
24 for us to reply to Mr. Karns' objection. I've talked to  
25 Mr. Karns about that. His objection is forty pages.

1 It's quite complex. We've got other things going as you  
2 can see and I've talked to Mr. Kahn and he graciously  
3 agreed to allow us to extend our time to respond to him  
4 to August 14th, which we represent the modification to  
5 your Honor's June 29th order he has indicated he's  
6 agreeable to that extension and I advised him I would  
7 have to get approval from you.

8 THE COURT: That amendment is approved. If you can  
9 just submit an amended order.

10 MR. WISTOW: Thank you, your Honor.

11 THE COURT: The Court has received and reviewed the  
12 fifth interim report and request for fees and expenses by  
13 the Special Master and those of the Special Counsel. The  
14 Court based on the report filed accepts the report  
15 ratifying the acts and deeds of the Special Master and  
16 Special Counsel. The Court has also had the opportunity  
17 to review the fees and expenses of the Special Counsel as  
18 well as the Special Master. As I stated, I reviewed the  
19 Special Master's fees last evening. This Court finds  
20 based on a review that the fees and expenses are fair and  
21 reasonable for the benefit of the estate at this point  
22 and those are approved. I understand there is cash on  
23 hand sufficient to pay those fees and expenses and  
24 Attorney Del Sesto is authorized to make those payments  
25 upon a signed order from this Court.

1           As I mentioned when we were talking about the e-mail  
2           issue before, the Court is available tomorrow if  
3           necessary for an emergency conference and any other time,  
4           but certainly based on the representations that have been  
5           made by Attorney Del Sesto today, this is certainly a  
6           significant issue that needs to be brought to a head and  
7           resolved one way or another and it's my sincere hope that  
8           between Angell and the Special Master something can be  
9           worked out very quickly that will not adversely affect  
10          the pension participants and will allow the account to be  
11          fully assumed by Gabriel Roder going forward. Is there  
12          anything else, counsel?

13                 MR. DEL SESTO: No, your Honor. Thank you.

14                 THE COURT: Thank you. The Court is in recess.

15                         (A D J O U R N E D.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25