

**HEARING DATE:
THURSDAY, JUNE 9, 2022 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 TWENTY-THIRD INTERIM REPORT AND TWENTY-SECOND
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 Twenty-Third Interim Report (the “Twenty-Third Report”) and Twenty-Second Interim Request for Approval of Fees, Costs and Expenses (the “Twenty-Second Fee Application”). In support of the Twenty-Third Report and Twenty-Second 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 June 1, 2022, 1,547 participants are currently receiving monthly benefits payments. The total amount of benefits paid in June 2022 equals \$967,121.46.

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, including, without limitation, the Liquidating Receivership (PC-2019-11756).

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.

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 regular, 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. 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.

7. 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.

8. 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 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 conducted seven (7) meetings under this format and will continue every 4-6 weeks until in-person gatherings are safe again. The next meeting will be scheduled in or about June/July 2022, unless circumstances arise that warrant a meeting prior to that scheduled date.

9. Prior to this Twenty-Third Report and Twenty-Second Request for Approval of Fees, the Receiver has filed twenty-two (22) prior reports with the Court and twenty-one (21) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Twenty-Second 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 Twenty-Third Interim Report as if fully set forth herein.

10. 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.

11. Since the filing of the Receiver’s Twenty-Second Interim Report and Twenty-First Interim Request for Approval of Fees, Costs and Expenses in this Superior Court Receivership action the following hearings and filings have occurred:

- a. On or about March 1, 2022, this Court held a hearing via WebEx on the Twenty-Second Report. Upon conclusion of the hearing, the Court approved the Twenty-Second Report and the Twenty-First Fee Request and an Order to that effect has not yet been entered.
- b. Also on or about March 1, 2022, the Court entered the Order granting the Liquidating Receiver’s and the Receiver’s Joint Petition for Approval of Settlement with Beacon Mutual Insurance Company and RI Department of Labor and Training.
- c. On or about May 24, 2022, the Receiver filed a Petition to Authorize Payment to Wistow Sheehan and Lovely (the “Petition to Authorize”) based upon the Court’s April 7, 2022, entry of the Order approving the Receiver’s Petition to Apply Trust Income to Pension Plan (the “Petition to Apply”) filed in the Liquidating Receivership matter (PC-2019-11756) on February 27, 2022 and heard on March 22, 2022. The hearing on the Petition to Authorize is scheduled for June 9, 2022, at 10 am.

12. Since the filing of and hearing on the Twenty-Second Report, the following hearings and filings have occurred in the Federal Litigation (CA No.: 1:18-CV-00328-S-LDA):

- a. On or about February 11, 2022, the Diocesan Defendants filed their Motion for Summary Judgment on Count IV of the First Amended Complaint and its Statement of Undisputed Facts in support of that Motion for Summary Judgement. On that

same date the Diocesan Defendants renewed its Motion to Dismiss the First Amended Complaint for Failure to State a Claim.

- b. On or about March 23, 2022, the parties filed a Joint Motion for an Extension of Time seeking an extension of briefing deadlines until April 11, 2022, for the Plaintiffs and April 25, 2022, for the Diocesan Defendants. The Court entered an Order approving the Motion on March 24, 2022.
- c. On or about April 7, 2022, the parties filed another Joint Motion for an Extension of Time seeking an extension of briefing deadlines until April 18, 2022, for the Plaintiffs and May 2, 2022, for the Diocesan Defendants. The Court entered an Order approving the Motion on April 11, 2022.
- d. On or about April 18, 2022, the Plaintiffs filed their: (a) Statement of Undisputed and Disputed Facts in Opposition to the Diocesan Defendants' Motion for Summary Judgement; (b) Response to the Diocesan Defendants' Statement of Undisputed Material Facts; (c) Response in Opposition to the Diocesan Defendants' Motion for Summary Judgment on Count IV of the First Amended Complaint, (d) Response in Opposition to the Diocesan Defendants' Motion to Dismiss the First Amended Complaint for Failure to State a Claim, and (e) Conditional Motion to defer or deny the Diocesan Defendants' Motion for Summary Judgement Pending Discovery.
- e. On or about April 29, 2022, the parties filed another Joint Motion for an Extension of Time seeking an extension of briefing deadlines for the Diocesan Defendants until June 3, 2022. The Court entered an Order approving the Motion on May 2, 2022.

13. Since the filing of and hearing on the Twenty-Second Report the following hearings and filings have occurred in the Liquidating Receivership (PC-2019-11756):

- a. On or about February 27, 2022, the Receiver filed his Petition to Apply and on or about March 17, 2022, the Liquidating Receiver filed a response in support of the Petition to Apply. Following a March 22, 2022, hearing on the Petition to Apply and the Liquidating Receiver's Response, the Court approved the Petition to Apply. An Order to that effect was entered on or about March 30, 2022.

- b. On or about March 1, 2022, the Court entered the Order granting the Liquidating Receiver's and the Receiver's Joint Petition for Approval of Settlement with Beacon Mutual Insurance Company and RI Department of Labor and Training.
 - c. On or about March 7, 2022, the Liquidating Receiver filed his Seventh Report and Request for Interim Compensation and an Order approving that Seventh Report was entered on May 13, 2022.
14. Following this Court's approval of the Petition to Apply, the issues remaining to be addressed and resolved in the Liquidating Receivership (all for the ultimate benefit of the Plan and its participants) are as follows:
- a. The challenge and/or resolution of all claims remaining in the Liquidating Receivership Estate.
 - b. The resolution of a tort action which the Liquidating Receiver has previously reported to this Court he became aware of in or about October 2021. Neither the Complaint nor the Amended Complaint in that action names legacy St. Joseph Health Services of RI ("SJHSRI"); and thus, the Receiver does not believe that any claim has been made against SJHSRI that requires defense or attention.
 - c. Under the Receiver's Settlement with the legacy hospitals, the Receiver was assigned the rights to a \$750,000 escrow fund held by RI Department of Labor and Training. This escrow serves as security for potential self-insured obligations of legacy Roger Williams Hospital ("RWH"). With the assistance of Special Counsel, your Receiver is trying to have this escrow released for the benefit of the Plan.

In light of the minimal issues remaining in the Liquidating Receivership, the ultimate benefit to the Plan from those issues and in order to maximize efficiencies and minimize expenses going forward, your Receiver and the Liquidating Receiver have agreed to seek joint approval from this Court to discharge the Liquidating Receiver and appoint the Receiver as the substitute Liquidating Receiver. The Receiver anticipates that this joint request will be filed with this Court in the next 30 days.

15. 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 April 30, 2022) and as a result of the receipt of the NET Settlement funds, the Plan assets totaled approximately \$72,808,399.² The largest factor in the reduction of the Plan assets is monthly benefit payments and other payments required for the administration of the Plan (i.e. accountant fees, actuarial fees, investment manager fees, benefits administration fees, etc.). 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 \$967,000 per month.

In an effort to protect and insulate the Plan from dramatic market fluctuations, the Receiver regularly reviewed and adjusted the allocation of assets for investment risk. These reallocations have been relatively successful in insulating the Plan from market volatility and losses. The Receiver continues to work with the investment manager to regularly review and 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, unpredictable fluctuations of the markets.

16. In connection with the administration of the within proceeding, as of the filing of the Twenty-Second Report on or about February 18, 2022, your Receiver had cash-on-hand totaling \$3,343,789.37. Since that time, your Receiver has had additional receipts in the amount of \$1,005,776.00 and has had additional disbursements totaling \$13,119.88, leaving current cash-on-hand in the sum of \$4,336,445.49, all as set forth in the “**Schedule of Receipts and Disbursements**” attached hereto.³

17. In connection with this Twenty-Third Report, your Receiver is requesting that the Court approve the Twenty-Second Fee Application incurred for the three (3) month period from February 1, 2022, through, and including, April 30, 2022. The Receiver respectfully requests that this Court approve the Twenty-Second Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver’s Twenty-Second Fee Application Invoice will be

² This amount does not include the Settlement “A” NET proceeds totaling approximately \$9,722,225.07 which are held with Schwab for the benefit of the Plan.

³ Cash-on-hand includes the funds received from Settlement “B” and funds transferred from the Liquidating Receiver in compliance with the Court’s April 7, 2022, Order approving the Petition to Apply.

presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Twenty-Third 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 Twenty-Third Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Twenty-Second 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
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: May 31, 2022

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 2022, 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

2:20 PM

05/31/22

Accrual Basis

St Joseph Health Services of RI Retirement Plan
Transactions by Account 053122
As of May 31, 2022

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
BankRI Checking Account						
02/24/2022	390	Litgistics	Inv #1835; copying & postage		3,738.32	3,343,789.37
03/04/2022	391	Gina Gomes	(3) hearing transcripts		111.00	3,340,051.05
03/14/2022	392	Litgistics	Inv #1888; copying & postage		5,068.29	3,339,940.05
03/17/2022	393	Gina Gomes	hearing transcript 030122		45.00	3,334,871.76
03/31/2022	394	Gina Gomes	hearing transcript 031722		39.00	3,334,826.76
04/08/2022	395	Litgistics	Inv #1998; copying & postage		4,118.27	3,334,787.76
04/19/2022			Trust Income from Hemmendinger per Court Order	1,005,776.00		3,330,669.49
04/21/2022	396	Marcum LLP	VOID:	0.00		4,336,445.49
Total BankRI Checking Account				1,005,776.00	13,119.88	4,336,445.49
TOTAL				1,005,776.00	13,119.88	4,336,445.49