

**Hearing Date: January 31, 2023 at 11:00 a.m.**

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

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v.

C.A. No.: PC-2017-3856

ST. JOSEPH'S HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
AS AMENDED

**PLAN RECEIVER'S MOTION TO ENFORCE SUBPOENA DUCES  
TECUM ON REPWEST INSURANCE COMPANY**

Stephen F. Del Sesto, Esq., solely in his capacities (a) as the Permanent Receiver (the "Plan Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") and (b) as the Permanent Liquidating Receiver ("Liquidating Receiver") of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI") and Roger Williams Hospital ("RWH"), hereby moves to enforce a subpoena duces tecum that was lawfully issued and served upon Repwest Insurance Company ("Repwest").

**BACKGROUND**

Repwest (formerly known as Republic Western Insurance) is an insurance corporation organized under the laws of Arizona with its principal office in Phoenix, Arizona. Repwest has received a property and casualty insurance company license to

do business in Rhode Island and has the NAIC # 31089.<sup>1</sup> As part of its licensing application, Repwest duly appointed Rhode Island's Insurance Commissioner as Repwest's lawful attorney for receiving service of process. See R.I. Gen. Laws § 27-2-13.

Prior to the affiliation in 2010 between SJHSRI and RWH (sometimes previously known as Roger Williams Medical Center), RWH was self-insured for workers' compensation claims. Under its program of self-insurance, RWH would have a self-insured retention above which it obtained certain insurance coverages from insurers such as Repwest. Repwest wrote one or more workers' compensation liability policies for RWH, including Republic Western Insurance Company policy RSU3801265 (with coverage dates of December 31, 1999 to December 31, 2000).

Following RWH's and SJHSRI's affiliation in 2010, RWH maintained an escrow account containing approximately \$2,450,000 pledged to the Rhode Island Department of Labor and Training ("DLT") for the benefit of RWH's employees for workers' compensation claims arising during RWH's period(s) of self insurance ("DLT Escrow"). In August 2018, Plan Receiver's counsel (working with RWH's then counsel) obtained permission from DLT to reduce the escrowed amount to \$750,000, so that the other approximately \$1,700,000 could be contributed to the Plan in connection with that certain settlement ("Settlement A") among the Plan Receiver, seven individual named plaintiffs, CCCB, SJHSRI, and RWH, which was ultimately approved by this Court on

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<sup>1</sup> See the Rhode Island Department of Business Regulation's list of Licensed and Approved Property & Casualty Insurance Companies, available at [https://dbr.ri.gov/sites/g/files/xkqbur696/files/2023-01/Property\\_and\\_Casualty\\_Insurance\\_Companies.pdf](https://dbr.ri.gov/sites/g/files/xkqbur696/files/2023-01/Property_and_Casualty_Insurance_Companies.pdf).

November 16, 2018 and by the U.S. District Court in the action Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No. 18-cv-00328-WES (D.R.I.) on October 9, 2019. In addition, pursuant to that same Settlement A, RWH (together with the other settling defendants) assigned the remaining \$750,000 DLT Escrow to the Plan Receiver.

The Plan Receiver is seeking to free up as much of the remaining \$750,000 DLT Escrow as possible, for the benefit of the Plan, by seeking to obtain a “portfolio loss transfer” insurance policy covering RWH’s period(s) of self-insurance. The subpoena that was served on Repwest seeks certain categories of documents containing information necessary for that purpose.

#### **PROCEDURAL TRAVEL OF THE SUBPOENA**

On November 14, 2022, counsel for Stephen F. Del Sesto issued a subpoena duces tecum to Repwest, returnable for December 7, 2022 at 2:00 p.m. at the offices of Wistow, Sheehan & Loveley, PC in Providence. A copy of that subpoena is attached hereto as Exhibit 1. The subpoena sought the categories of documents recited in Schedule A to the subpoena.

On November 17, 2022, pursuant to R.I. Gen. Laws §§ 27-2-13 and 27-2-14, service of the subpoena was effectuated by constable service upon the Insurance Commissioner as Repwest’s lawful attorney for receiving service of process. See Exhibit 1 at 4 (constable’s proof of service, attached to the subpoena). Proof of service was duly filed with the Court on November 18, 2022. See Exhibit 1 *passim* (reflecting the filing time stamp at the upper left corner of each page).

On December 7, 2022 at 2:00 p.m., no one attended from Repwest. See Exhibit 2 (deposition transcript). No one from Repwest had contacted the Plan Receiver's counsel concerning the subpoena. Id. Repwest never served any objections to the subpoena, either during the period specified in Super. R. Civ. P. 45(c)(2)(B) or otherwise. See id.

### **THE SUPER. R. CIV. P. 45 STANDARD**

Super. R. Civ. P. 45(e) provides:

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court in which the action is pending.

Super. R. Civ. P. 45(e).

Failure of a nonparty without adequate excuse to respond to a subpoena either to produce documents or to give testimony constitutes contempt of court. A recipient that intends not to obey the subpoena must file objections or move to quash. He or she cannot merely ignore the subpoena and then, after being held in contempt, assert that the subpoena was improper.

Kent, Simpson, Flanders, Wollin, Rhode Island Civil Procedure § 45:6.

Here, Repwest has simply and impermissibly ignored the subpoena.

### **RELIEF SOUGHT**

Plaintiff respectfully requests entry of an order (1) compelling Repwest to produce the requested documents within thirty (30) days; and (2) conditionally adjudging Repwest in contempt if it fails to produce the records within that period.

Respectfully submitted,

Stephen F. Del Sesto, Esq. (#6336),  
Solely in His Capacities as Permanent Plan  
Receiver of the St. Joseph Health Services of  
Rhode Island Retirement Plan, and as  
Permanent Liquidating Receiver of St. Joseph  
Health Services of Rhode Island, Roger  
Williams Hospital, and CharterCARE  
Community Board,

By His Attorneys,

/s/ Max Wistow

Max Wistow, Esq. (#0330)  
Stephen P. Sheehan, Esq. (#4030)  
Benjamin Ledsham, Esq. (#7956)  
Wistow, Sheehan & Loveley, PC  
61 Weybosset Street  
Providence, RI 02903  
(401) 831-2700; (401) 272-9752 (fax)  
[mwistow@wistbar.com](mailto:mwistow@wistbar.com)  
[spsheehan@wistbar.com](mailto:spsheehan@wistbar.com)  
[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

Dated: January 19, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that, on the 19th day of January, 2023, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.  
Pierce Atwood LLP  
One Financial Plaza, 26<sup>th</sup> Floor  
Providence, RI 02903  
[sdelsesto@pierceatwood.com](mailto:sdelsesto@pierceatwood.com)

Richard J. Land, Esq.  
Chace Rутtenberg & Freedman, LLP  
One Park Row, Suite 300  
Providence, RI 02903  
[rland@crflp.com](mailto:rland@crflp.com)

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Lisa M. Kresge, Esq.  
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Brennan Recupero Cascione Scungio  
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[themmendinger@brcsm.com](mailto:themmendinger@brcsm.com)

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[hm@psh.com](mailto:hm@psh.com)

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Dean J. Wagner, Esq.  
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[dwagner@savagelawpartners.com](mailto:dwagner@savagelawpartners.com)

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[Sboyajian@rc.com](mailto:Sboyajian@rc.com)  
[dsullivan@rc.com](mailto:dsullivan@rc.com)

[sclough@brcsm.com](mailto:sclough@brcsm.com)  
[lkresge@brcsm.com](mailto:lkresge@brcsm.com)  
[rcascione@brcsm.com](mailto:rcascione@brcsm.com)

Julia Harvey, Esq.  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
[jharvey@riag.ri.gov](mailto:jharvey@riag.ri.gov)

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

In addition, the foregoing document was mailed by first class mail, postage prepaid, to the following addresses (which are reflected on the records of the Corporations Division of the Arizona Corporations Commission):

Repwest Insurance Company  
2721 N Central Avenue  
Phoenix, AZ 85004

Repwest Insurance Company  
c/o: C T Corporation System  
3800 N. Central Ave., Ste. 460  
Phoenix, AZ 85012

In addition, the foregoing document was e-mailed to Richard Jamison, Manager, Workers Compensation Claims, Repwest Insurance Co., at [RAJamison@Repwest.com](mailto:RAJamison@Repwest.com).

/s/ Benjamin Ledsham

# Exhibit 1



Case Number: PC-2017-3856  
 Filed in Providence/Bristol County Superior Court  
 Submitted: 11/18/2022 9:58 AM  
 Envelope: 3876381  
 Reviewer: Maureen D.



**STATE OF RHODE ISLAND**

**SUPERIOR COURT  
 SUBPOENA - CIVIL**

<b>Plaintiff/Petitioner</b> St. Joseph Health Services of Rhode Island, Inc.	<b>Civil Action File Number</b> PC-2017-3856
<b>Defendant/Respondent</b> St. Joseph Health Services of Rhode Island Retirement Plan	

<input type="checkbox"/> Murray Judicial Complex Newport County 45 Washington Square Newport, Rhode Island 02840-2913 *(401) 841-8330	<input type="checkbox"/> Noel Judicial Complex Kent County 222 Quaker Lane Warwick, Rhode Island 02886-0107 *(401) 822-6900
<input type="checkbox"/> McGrath Judicial Complex Washington County 4800 Tower Hill Road Wakefield, Rhode Island 02879-2239 *(401) 782-4121	<input checked="" type="checkbox"/> Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence, Rhode Island 02903-2719 *(401) 222-3230

**TO:** Keeper of Records, Repwest Insurance Company  
 of c/o Insurance Commissioner, Insurance Division, 1511 Pontiac Ave, Bldg. 69-2, Cranston, RI 02920

**YOU ARE HEREBY COMMANDED** to appear in the Superior Court listed above at the date, time, and courtroom specified below to testify in the above-entitled case and bring with you:

\_\_\_\_\_

\_\_\_\_\_

Courtroom	Date	Time

If you need language assistance, please contact the Office of Court Interpreters at (401) 222-8710 or by email at [interpreterfeedback@courts.ri.gov](mailto:interpreterfeedback@courts.ri.gov) before your court appearance.

\* If an accommodation for a disability is necessary, please contact the Superior Court Clerk's Office at the telephone number listed above as soon as possible. TTY users can contact the Superior Court through Rhode Island Relay at 7-1-1 or 1-800-745-5555 (TTY) to voice number.

Case Number: PC-2017-3856  
 Filed in Providence/Bristol County Superior Court  
 Submitted: 11/18/2022 9:58 AM  
 Envelope: 3876381  
 Reviewer: Maureen D.



**STATE OF RHODE ISLAND  
 SUPERIOR COURT**

**YOU ARE HEREBY COMMANDED** to appear at the location, date, and time specified below to testify at the taking of a deposition in the above-entitled case.

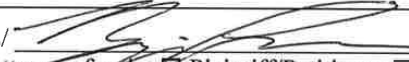
Location of Deposition	Date	Time

**YOU ARE HEREBY COMMANDED** to produce and permit inspection and copying of the following documents or objects at location, date, and time specified below (list documents or objects):

See attached Schedule A


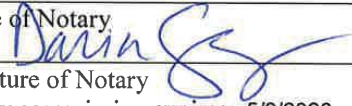
Location	Date	Time
61 Weybosset St, Providence, RI 02903	December 7, 2022	2:00 p.m.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. (Rule 30(b)(6) of the Superior Court Rule of Civil Procedure).

/s/ 	Rhode Island Bar Number: 7956
Attorney for the <input checked="" type="checkbox"/> Plaintiff/Petitioner <input checked="" type="checkbox"/> Defendant/Respondent or <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent	Date: 11/14/2022
Telephone Number: 401-831-2700	

Issued by <input type="checkbox"/> Clerk, <input checked="" type="checkbox"/> Notary, or <input type="checkbox"/> Issuing Official pursuant to G.L. 1956 § 9-17-3	Date: 11/14/2022
---	---------------------

/s/ \_\_\_\_\_  
 Clerk

Daria Souza Name of Notary	
 Signature of Notary	
Notary commission expires: 5/9/2026	
Notary identification number: 768717	

Name of Issuing Official
Signature of Issuing Official



**STATE OF RHODE ISLAND  
SUPERIOR COURT**

**The following information is being provided pursuant to Rule 45(c), (d), and (e) of the Superior Court Rules of Civil Procedure.**

**(c) Protection of Persons Subject to Subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.  
  
(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the self-represented litigant or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
  - (i) Fails to allow reasonable time for compliance;
  - (ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or
  - (iii) Subjects a person to undue burden.(B) If a subpoena
  - (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
  - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
  - (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (e) Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court in which the action is pending.



STATE OF RHODE ISLAND  
SUPERIOR COURT

Plaintiff/Petitioner	Civil Action File Number
Defendant/Petitioner	

**PROOF OF SERVICE**

I hereby certify that on the date below I served a copy of this Subpoena on Insurance Division personally.

I hereby certify that I was unable to make service after the following reasonable attempts:  
\_\_\_\_\_

SERVICE DATE: 11 / 17 / 22 10:13p      SERVICE FEE \$ 45.00  
Month    Day    Year

Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE  
Damary A. Collins  
CONSTABLE  
6063

SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED.

Signature \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_  
 personally known to the notary or  proved to the notary through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge.

Notary Public: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Notary identification number: \_\_\_\_\_

## SCHEDULE A

### Definitions

- a. The word "**documents**" as used herein is meant in the broad and liberal sense and includes hand-written, typed, recorded, electronically stored, or graphic material of any kind and description, and whether a draft, copy, original, or master, including, but not limited to, e-mails, electronic versions of documents, accounts, advertisements, letters, memoranda, prospectuses, resolutions, legislation, notes of conversations, contracts, agreements, drawings, tape recordings, inter-office and intra-office memoranda, studies, working papers, corporate records, minutes of meetings, checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type, and documents stored on data storage modules, databases, servers, computers, tapes, discs or other memory devices, or other information retrievable from storage systems. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "**document**" also includes data compilations from which information can be obtained and translated, if necessary, by the requesting party in a reasonably usable form.
- b. The term "any" and the term "all" are intended to mean "any and all."
- c. Any word in the singular also includes the plural and vice versa.
- d. The term "**RWH**" refers to Roger Williams Hospital and Roger Williams Medical Center.

### Documents Requested

1. Any documents concerning the inception and/or policy periods of **RWH's** workers' compensation self-insurance program, including but not limited to the periods spanning January 1, 1996 through December 31, 2008.
2. Any documents consisting of actuarial evaluations or reports concerning **RWH's** workers' compensation self-insurance program.
3. Any documents concerning the terms, limits, carriers, policy periods, or policy forms (including endorsements) of workers' compensation insurance or excess insurance for **RWH**, including but not limited to Republic Western Insurance Company policy RSU3801265.
4. For each year of **RWH's** self-insurance (including 1996 through 2008), any documents concerning audited or unaudited payroll information including workers' compensation code numbers, employee classifications, the number of

Case Number: PC-2017-3856  
Filed in Providence/Bristol County Superior Court  
Submitted: 11/18/2022 9:58 AM  
Envelope: 3876381  
Reviewer: Maureen D.

**RWH's employees in each classification, audited payroll amounts per classification, and manual premiums.**

- 5. Any correspondence to or from RWH or its agents (including but not limited to Cambridge Integrated Services or BMIC Service Corp.) relating to RWH or its coverages.**
- 6. Any claims files concerning RWH.**

# Exhibit 2

**RECORDS REPWEST INS  
 SJHS V SJHS RETIREMENT**

**December 07, 2022  
 1-4**

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1 STATE OF RHODE ISLAND	1 INDEX OF EXHIBITS
2 PROVIDENCE, SC SUPERIOR COURT	2
3	EXHIBITS DESCRIPTION PAGE
4	3
5	(DEFENDANT'S)
6 ST. JOSEPH HEALTH SERVICES	4
7 OF RHODE ISLAND, INC.	5 Exhibit 1 SUBPOENA TO THE KEEPER OF RECORDS
8 VS. C.A. No.:PC-2017-3856	6 FOR REPWEST INSURANCE COMPANY
9	7 (6PP) ..... 4
10 ST. JOSEPH HEALTH SERVICES	8
11 OF RHODE ISLAND RETIREMENT	9
12 PLAN, as amended	10
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16 DEPOSITION OF THE	14
17 KEEPER OF RECORDS FOR	15
18 REPWEST INSURANCE COMPANY	16
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21	19
22 DECEMBER 7, 2022	20
23 2:00 P.M.	21
24	22
25 NANCY O'ROURKE, CSR	23
	24
	25
Page 2	Page 4
1 APPEARANCE OF COUNSEL	1 (COMMENCED AT 2:00 P.M.)
2	2 MR. LEDSHAM: My name is Benjamin Ledsham,
3 On Behalf of the Defendant:	3 and I represent Stephen Del Sesto, receiver of the
4 BENJAMIN G. LEDSHAM	4 Saint Joseph Health Services of Rhode Island
5 WISTOW, SHEEHAN & LOVELEY, PC	5 Retirement Plan.
6 61 Weybosset Street	6 We're here today pursuant to a subpoena
7 Providence, Rhode Island 02903	7 duces tecum served on the keeper of records of
8 401-831-2700	8 Repwest Insurance Company for 2:00 today. It is now
9 401-272-9752 (fax)	9 2:00, and nobody has attended, and nobody has
10 bledsham@wistbar.com	10 contacted our office concerning the subpoena, and
11	11 we'll mark a copy of the subpoena as Defendant's
12	12 Exhibit 1.
13	13 EXHIBIT 1 MARKED FOR ID
14	14 (DEPOSITION CONCLUDED AT 2:01 P.M.)
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RECORDS REPWEST INS  
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CERTIFICATION

I, Nancy D. O'Rourke, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court of Rhode Island, especially, but without restriction thereto, under Rule 28 of said Rules, that the witness was first sworn by me; that the transcript contains a true record of the proceedings. Reading and signing the transcript was not requested by the witness or any parties upon the completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, 2022.



Nancy D. O'Rourke, CSR  
Notary Public: ID#51575  
My Commission Expires:  
June 2, 2023

IN RE: ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.  
VS. ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND  
RETIREMENT PLAN, AS AMENDED