

**WEBEX HEARING DATE:  
FRIDAY, APRIL 21, 2023 AT 9:30 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.

PC-2017-3856

St. Josephs Health Services of Rhode Island  
Retirement Plan, as amended

*Respondent*

Bank of America, in its capacity as Trustee of  
Respondent

*Nominal Respondent*

**RECEIVER’S SUPPLEMENT TO TWENTY-SIXTH INTERIM REPORT**

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 supplement to his Twenty-Sixth Interim Report (the “Twenty-Sixth Report”) in order to provide a more detailed narrative regarding the status of the Trust disbursements that are the subject of this Court’s Order dated April 7, 2022, entered in the matter captioned as In re: CharterCARE Community Board, et. al. (PC-2019-11756) (the “Trust Order”). For the reasons stated below, the accounting of the Trust disbursements that are the subject of the Trust Order is not included in the Schedule of Receipts and Disbursements for the Plan Receivership because those funds have technically not yet been received by or paid to the Plan Receivership account reported in that Schedule of Receipts and Disbursements. Rather, those funds were remitted to

and are still held by in Liquidating Receivership Estate accounts and the Plan Receiver anticipated reporting them in connection with that matter.

Since April 7, 2022, there has been significant confusion surrounding the Trust disbursements regarding whether they were paid by Bank of America, NA (the “Bank”) as required, when they were paid by the Bank, to whom the Bank delivered those disbursements, to whom the Bank made the disbursement checks payable and how, if at all, they were received by the Plan Receiver for the benefit of the Plan. This confusion was most recently highlighted by Wistow, Sheehan & Loveley, P.C. (“WSL”) and the Bank in connection with the Plan Receiver’s January 9, 2023 Petition to Partially Distribute Corpora of Certain Trusts (the “Corpora Petition”). As the Plan Receiver has discovered and this Court will see through its review of this supplemental submission, a significant portion of the confusion arose due to three issues: (a) unclear and incomplete communications between the Bank, WSL, the Plan Receiver and/or the previous Liquidating Receiver, Attorney Hemmendinger (“Hemmendinger”) regarding the Trusts and disbursements; (2) the Bank’s decision to not respond to or participate in the hearing on the Plan Receiver’s Petition to Apply Trust Income to Pension Plan (the Trust Petition”); and (3) a lack of clarity in the terms of paragraph 7 of the April 7, 2022, Order as to what “pay to the Plan Receiver” meant.

As this Court recalls, on or about March 22, 2022, this Court held a hearing on the Plan Receiver’s Petition to Apply Trust Income to Pension Plan (the “Trust Petition”). The Court granted the Petition by way of an Order dated April 7, 2022 (the “Trust Order”).<sup>1</sup> Pursuant to paragraph 7 of the Trust Order, this Court ordered:

“7. Bank of America, N.A. or any successor trustee shall pay to the Plan Receiver any and all future income and distributions from the Trusts named in paragraphs 4-a. through 4-g. above that would (but for this order) have been payable to SJHSRI, RWH, or the Liquidating Receiver.”

It is the Plan Receiver’s understanding that the purpose for requiring payment to the Plan Receiver was intended to make clear that any and all future income and distributions from the Trusts named in paragraphs 4-a. through 4-g of the Trust Petition would be property of the Plan Receivership and not become part of the Liquidating Receivership estate.

Shortly after the entry of the Trust Order, the previous Liquidating Receiver, Attorney Hemmendinger (“Hemmendinger”) and WSL separately notified the Bank of the entry of the Order. Despite receiving repeated notice of the Trust Order, the Bank continued to disburse funds from the Trusts named in paragraphs 4-a through 4-g of the Trust Petition to either Attorney Land (who served as pre-Plan receivership/pre-Liquidating Receivership counsel to legacy SJHSRI and RWH) (“Land”) or Hemmendinger. In the instances where Land received the funds, the Plan Receiver understands that Land’s practice was to forward those disbursements checks, unnegotiated, to Hemmendinger as Liquidating Receiver. In turn, Hemmendinger would deposit those disbursement checks, as well as those that he received directly from the Bank, into 1 of the 4 Liquidating Receivership accounts that he established.

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<sup>1</sup> The Plan Receiver originally reported the issue of Trust Petition and this Court’s resulting April 7, 2022, Order in his Twenty-third Interim Report.

Thereafter, Hemmendinger would periodically issue checks for those Trust funds payable to the Plan Receiver along with an indication/explanation of which Trust fund or funds disbursements the check being delivered was comprised. Upon receipt, the Plan Receiver would deposit those funds into the Plan Receivership Estate account.<sup>2</sup> This procedure continued until the early part of 2023.

On or about December 13, 2022, this Court held a hearing on the Plan Receiver's and the Liquidating Receiver's Joint Petition to Appoint Plan Receiver as Liquidating Receiver of CCCB, SJHSRI and RWH (the "Joint Petition"). An Order approving the Joint Petition was entered by this Court on December 16, 2022 ("LR Transfer Order"). The Plan Receiver has been acting as the Liquidating Receiver since that date. Immediately following the entry of the LR Transfer Order, the Plan Receiver and Hemmendinger coordinated efforts to transition funds held by Hemmendinger and any open matters and issues related to the Liquidating Receivership. During that transition, the Plan Receiver began to fully realize and understand that the Bank had taken little to no efforts to comply with Paragraph 7 of the Trust Order. After several communications with the Bank, the Plan Receiver discovered that the reason for the non-compliance was because each Trust identified in the Trust Petition was being managed by a separate Philanthropic Service Officer ("PSO"). Therefore, although actual notice of the Trust Order was provided by Hemmendinger and WSL to the Bank as a whole and to 1 of the 7 PSOs at the Bank in particular, the Bank failed to notify the PSOs for the remaining 6 Trusts. As a result, the Trust Order's command that disbursements be paid to the Plan Receiver resulted in the delivery of disbursement checks to the Plan Receiver by only 1 of the 7 Trusts, the rest incorrectly continuing to be delivered to Land and/or Hemmendinger. Upon learning of this discrepancy, the Plan Receiver took efforts to identify and communicate with each PSO. Those communications appear to have been successful. As of the date of this Supplemental submission, the Plan Receiver can confirm that the contact and mailing information for each Trust has been changed. In addition, the Bank has also advised the Plan Receiver that going forward any and all Trust disbursements will be made payable to the Plan Receiver.<sup>3</sup>

Notwithstanding the corrections/changes (as set forth above) recently communicated by the Bank, prior to the filing of the 26<sup>th</sup> Interim Report and this supplement to that Report, the Plan Receiver received Trust disbursement checks payable to either "St Joseph Health Services of RI" or "Roger Williams Medical Center". The checks made payable to "St Joseph Health Services of RI" were<sup>4</sup> deposited into the Plan Receivership account. However, checks payable to "Roger Williams Medical Center" could not be deposited into the Plan Receivership Account directly. Due to this "payee" issue, accounts were established by the successor Liquidating

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<sup>2</sup> A Schedules of Receipts and Disbursements for the Plan Receivership Estate account have been provided with each Interim Report and are incorporated herein by reference.

<sup>3</sup> The Plan Receiver will not be in a position to confirm this until the next set of Trust disbursements are received by the Plan Receiver. However, on April 4, 2023, counsel for the Bank informed the Plan Receiver in writing: "As to the seven trusts named in the April 2022 Order, the Bank will be making future payments to Steve [Del Sesto] as plan receiver." Accordingly, the Bank's past failures to comply with the Trust Order have been cured, at least going forward. If the Plan Receiver experiences any further difficulty with the Bank on these issues, appropriate action will be taken including, if necessary, seeking to hold the Bank in contempt. .

<sup>4</sup> The payee "St Joseph Health Services of RI" is closely related to and resembles "St Joseph Health Services of Rhode Island Retirement Plan" so checks with that payee are accepted by the bank for deposit directly into the Plan Receivership Estate account.

Receiver in the name of “Roger Williams Medical Center Liquidating Receivership Estate” and checks with that payee were deposited into that account. Because those accounts were not established in the Plan Receivership, the deposits into those accounts do not appear on the Plan Receiver’s Schedule of Receipts and Disbursements. The deposits and all other activity in connection with those accounts will be included on the Schedule of Receipts and Disbursements filed as part of the successor Liquidating Receiver’s Interim Reports. Notwithstanding the distinction in the accounts and receivership proceedings, the Schedules of Receipts and Disbursements for the Liquidating Receivership accounts established in January 2023 are attached as Exhibit A.

In addition, in connection with the Corpora Petition the Plan Receiver, through WSL, raised several questions as to the actions, accountings, and payments related to the Trusts. Most significantly, due to the fact that after April 7, 2022, the Bank continued to send disbursement checks to Land and Hemmendinger, it was difficult to track what payments were actually made<sup>5</sup> and if those payments were made in the correct amounts.<sup>6</sup> Faced with these concerns, the Plan Receiver, both in that capacity and as Liquidating Receiver, made the decisions to not transfer funds from the Liquidating Receivership Estate to the Plan Receivership Estate and to not transfer Trust funds from the Plan Receivership Estate to the Plan until the accounting issue was resolved. Based on the detailed information received from the Bank regarding check amounts, dates, payees, and to whom they were delivered, the Plan Receiver has been able to track and identify that all Trust disbursements made by the Bank since the entry of the Trust Order were received by Land, Hemmendinger or the Plan Receiver. Further, excluding a hold back of funds by the prior Liquidating Receiver to cover his unpaid administrative expenses, costs and fees (payment for which is subject to this Court’s approval, presently set down for hearing on April 18, 2023), the Plan Receiver, either in that capacity or as successor Liquidating Receiver, is holding all the funds which are the subject of the Trust Order. With the confusion cleared up, the Plan Receiver will be in a position to pay the fees of WSL and remit the balance of those funds into and for the benefit of the Plan in accordance with the Trust Order.

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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<sup>5</sup> Because Trust disbursements received by Land and Hemmendinger were deposited into Hemmendinger’s Liquidating Receivership Estate accounts before being remitted as combined, “lump” checks to the Plan Receiver it made it more difficult for the Plan Receiver to determine which payments had been made by the Bank, from which Trust they had been made, and when the Bank had made such payments.

<sup>6</sup> During the transition from Hemmendinger, the Plan Receiver learned that not all Trust distributions are made on the same payment timing schedule.

Dated: April 13, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of April, 2023, 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*

# **EXHIBIT A**

**RWH General Fund Account**  
**Transaction Detail by Account**  
**December 16, 2022 through April 11, 2023**

Date	Memo	Debit	Credit	Balance
<b>RWH BankRI General Fund Acct</b>				
01/19/2023	closeot funds from Hemmendinger's account	86,507.19		86,507.19
01/31/2023	Interest	45.90		86,553.09
02/22/2023	Steinrt semi-annual dist (rec'd from BoA)	1,051.50		87,604.59
02/22/2023	interest	99.72		87,704.31
02/24/2023	chargeback fee		10.00	87,694.31
03/02/2023	Knight quarterly dist (from BoA)	3,023.75		90,718.06
03/02/2023	KoR Subpoena service fee	11.00		90,729.06
03/23/2023	Flint quarterly dist (reissue of ck dtd 11.23.22 (rec'd from BoA)	5,929.00		96,658.06
03/23/2023	Flint quarterly dist (rec'd from BoA)	4,514.00		101,172.06
04/04/2023	Horton (\$35,840.17) & Brown (\$8,628)quarterly distributions (rec'd from BoA)	44,468.17		145,640.23
	Total RWH BankRI General Fund Acct	145,650.23	10.00	145,640.23
<b>TOTAL</b>		<b><u>145,650.23</u></b>	<b><u>10.00</u></b>	<b><u>145,640.23</u></b>

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Accrual Basis

**RWH Cy Pres Account**  
**Transaction Detail by Account**  
**December 16, 2022 through April 11, 2023**

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<u>Type</u>	<u>Date</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
<b>RWH BankRI Cy Pres Acct</b>					
Deposit	01/19/2023	closeout funds from Hemmendinger's account	160,365.02		160,365.02
Deposit	01/31/2023	interest	113.20		160,478.22
Deposit	02/28/2023	interest	244.00		160,722.22
Total RWH BankRI Cy Pres Acct			160,722.22	0.00	160,722.22
<b>TOTAL</b>			<b>160,722.22</b>	<b>0.00</b>	<b>160,722.22</b>



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Accrual Basis

**SJHSRI General Fund Account**  
**Transaction Detail by Account**  
December 16, 2022 through April 11, 2023

<u>Date</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
<b>SJHSRI BankRI General Fund Acct</b>				
01/19/2023	closeout funds from Hemmendinger's account	70,774.93		70,774.93
01/31/2023	interest	37.55		70,812.48
03/23/2023	interest	80.94		70,893.42
Total SJHSRI BankRI General Fund Acct		70,893.42	0.00	70,893.42
<b>TOTAL</b>		<b>70,893.42</b>	<b>0.00</b>	<b>70,893.42</b>

**CCCB**  
**Transaction Detail by Account**  
**December 16, 2022 through April 11, 2023**

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<u>Type</u>	<u>Date</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
<b>CCCB BankRI Acct</b>					
Deposit	01/19/2023	closeout funds from Hemmendinger's account	9,642.08		9,642.08
Deposit	01/31/2023	interest	0.34		9,642.42
Deposit	02/22/2023	interest	0.74		9,643.16
Total CCCB BankRI Acct			9,643.16	0.00	9,643.16
<b>TOTAL</b>			<b>9,643.16</b>	<b>0.00</b>	<b>9,643.16</b>