

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

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND, INC.

:

v.

:

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

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

:

In re:

:

CHARTERCARE COMMUNITY BOARD,
ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND and ROGER
WILLIAMS HOSPITAL

:

C.A. No.: PC-2019-11756

PETITION TO PARTIALLY DISTRIBUTE CORPORA OF CERTAIN TRUSTS

NOW COMES 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") (SJHSRI and RWH being collectively referred to as the "Heritage Hospitals"), and hereby petitions this Court for an order directing the Trustee of certain trusts to pay to the Plan Receiver, in lump sums, the portions of the corpora corresponding to the pro-rata interests of the Heritage Hospitals.

The Plan Receiver seeks this relief pursuant to the April 7, 2022 Order in the Liquidating Receivership proceeding¹ which directed that “all income or distributions” from those trusts be paid to the Plan Receiver, and pursuant to the equitable doctrine of deviation.

This petition is founded upon the jurisdiction of the Court in receiverships and the inherent equitable jurisdiction of the Court over trusts, including equitable jurisdiction pursuant to R.I. Gen. Laws § 8-2-13.

In support of this petition, the Plan Receiver states as follows:

1. The first-above captioned action, St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph’s Health Services of Rhode Island Retirement Plan, as amended, C.A. No. PC-2017-3856 (the “Plan Receivership”), was commenced on August 17, 2017, upon the Petition of SJHSRI to appoint a receiver of the Plan.

2. SJHSRI’s Petition alleged that the Plan was insolvent and sought to impose an immediate reduction in benefits of 40% for all Plan participants. Specifically, SJHSRI’s Petition sought the following relief:

(1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

3. As a result of the Petition the Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan on August 18, 2017.

¹ In re: CharterCare CharterCARE Community Board, St. Joseph Health Services of Rhode Island And Roger Williams Hospital, C.A. No. PC-2019-11756 (R.I. Super.) (the “Liquidation Proceedings” or “Liquidating Receivership”). The Heritage Hospitals are wholly owned subsidiaries of CCCB.

4. On October 11, 2017, the Plan Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage the law firm Wistow, Sheehan & Loveley, PC (“WSL”) as Special Counsel. On October 17, 2017, the Court granted the Emergency Petition. The Order granting the Emergency Petition states in pertinent part:

That for the reasons stated in the Receiver’s Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Loveley PC (“WSL”) to act as the Receivership Estate’s special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement

5. On October 27, 2017, the Court appointed Stephen F. Del Sesto, Esq. as Permanent Receiver of the Plan.

6. With the approval of the Plan Receiver and in addition to its representation of and investigation related to claims of the Plan Receiver, WSL was also retained in May and June 2018 by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque (“Seven Named Plaintiffs”). The Seven Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in one or more class actions.

7. Prior to June 20, 2014, the Heritage Hospitals had owned and operated certain health care facilities, including Our Lady of Fatima Hospital and Roger Williams Hospital. On June 20, 2014, the Heritage Hospitals sold those assets to for-profit entities, specifically to entities under the aegis of Prospect Medical Holdings, Inc., in a transaction that was approved by the Rhode Island Attorney General and Rhode Island Department of Health (the “2014 Asset Sale”).

8. On June 18, 2018, WSL filed separate Complaints, on behalf of the Plan Receiver and the Seven Named Plaintiffs, in both the U.S. District Court for the District of Rhode Island² and the Rhode Island Superior Court.³

9. Thereafter, over several years of intense litigation, the Plan Receiver and the Seven Named Plaintiffs entered into three settlements.

10. The first settlement (“Settlement A”) was of the Federal Court Action Plaintiffs’ claims against CCCB, SJHSRI, and RWH, and involved an initial⁴ gross recovery of \$12,600,000.

11. The second settlement (“Settlement B”) was of the Federal Court Action Plaintiffs’ claims against CharterCARE Foundation and involved a gross recovery of \$4.5 million.

12. Those settlements were ultimately approved both by this Court in this Plan Receivership (on November 16, 2018 and December 27, 2018, respectively) and by the court in the Federal Court action (on October 9, 2019 and September 30, 2019 respectively) after extensive motion practice and detailed review by both courts of the validity and fairness of both settlements.

13. The third settlement (the “Prospect/Angell Settlement”) was of the claims asserted against persons and entities affiliated with Prospect Medical Holdings, Inc. and The Angell Pension Group, Inc., for a gross settlement amount of \$30 million. The

² Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No. 18-cv-00328-WES (D.R.I.) (the “Federal Court Action”).

³ Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No. PC-2018-4386 (R.I. Super.) (the “State Court Action”). The State Court Action was consensually stayed and remains so through this date.

⁴ Subsequent recoveries attributable to this settlement include (*inter alia*) the income distributions from the trusts discussed herein which, by order of this Court of April 7, 2022 in the Liquidation Proceedings, have been and are being paid to the Plan Receiver.

Prospect/Angell Settlement received approvals from the Court in both this Plan Receivership (on March 4, 2021) and the Liquidating Receivership (on March 4, 2021), and from the court in the Federal Court Action (on July 29, 2021). The validity and fairness of this settlement were also reviewed by both courts.

14. Under Settlement A, CCCB, SJHSRI, and RWH agreed:

- a) to pay cash to the Plan Receiver;
- b) to assign certain rights to the Plan Receiver;⁵
- c) that they were jointly and severally liable to the Federal Court Action's Plaintiffs for at least \$125 million;
- d) to petition themselves into the Liquidation Proceedings;
- e) to take all reasonable steps in such proceedings to marshal their other assets and oppose and seek to limit the claims of other creditors.

15. In each of the three settlements, a settlement class was certified, the Seven Named Plaintiffs were certified as class representatives, and WSL was certified as class counsel.

16. Following judicial approvals of Settlement A, on December 13, 2019, and as required by Settlement A, CCCB and the Heritage Hospitals initiated the Liquidation Proceedings by filing a Petition for Judicial Dissolution and Liquidation of Assets and Affairs pursuant to R.I. Gen. Laws § 7-6-60(a)(3) and § 7-6-61, seeking appointment of a liquidating receiver. Following a hearing on that Petition, this Court granted the Petition and Thomas Hemmendinger ("Receiver Hemmendinger") was appointed as the temporary liquidating receiver of CCCB, SJHSRI, and RWH.

⁵ These rights included CCCB's membership interests in Prospect Chartercare, LLC and CharterCARE Foundation, which were later disposed of (in exchange for cash consideration paid to the Plan Receiver) in the Prospect/Angell Settlement and Settlement B, respectively.

17. Certain releases were exchanged in connection with the settlement, but the releases that the Plan Plaintiffs gave to the Heritage Hospitals and CCCB expressly preserved all of the Plaintiffs' claims to the extent that there may be assets of the Heritage Hospitals and CCCB available to be distributed in the Liquidation Proceedings.

18. On January 17, 2020, Receiver Hemmendinger was duly appointed permanent liquidating receiver of CCCB, SJHSRI, and RWH, and of all real property and all tangible and intangible personal property of CCCB, SJHSRI, and RWH.

19. Upon his appointment, Receiver Hemmendinger began receiving the income and distributions from certain charitable trusts (hereinafter the "Subject Trusts"⁶) that were payable to SJHSRI and/or RWH as beneficiaries named under those trusts, including:

- a. The Trust under Will of Sarah S. Brown dated June 21, 1911
Total valuation: \$1,855,821.58 as of September 30, 2022
RWH's 50% share: \$927,910.79
Other beneficiary: Rhode Island Hospital (50%);
- b. The Trust under Will of C. Prescott Knight dated Nov. 14, 1932
Total valuation: \$324,973.65 as of September 30, 2022
RWH's 100% share: \$324,973.65
Other beneficiaries: none;
- c. The Trust under Will of George Luther Flint dated June 25, 1935
Total valuation: \$986,045.06 as of September 30, 2022
RWH's 50% share: \$493,022.53
Other beneficiary: Rhode Island Hospital (50%);
- d. The Trust under Will of Albert K. Steinert dated July 11, 1927
Total valuation: \$287,823.92 as of November 30, 2022
SJHSRI's 16.66% share: \$47,970.66
RWH's 16.66% share: \$47,970.66

⁶ This list also included the Harold A. Sweetland Fund, which has a corpus of \$912,995.19 (as of September 30, 2022), in which the Heritage Hospitals' rights will effectuate upon the death of the existing income beneficiary. Accordingly, it is premature to obtain any partial termination or distribution of the Harold A. Sweetland Fund at this time. Petitioner instead seeks an Order for partial termination and distribution to be effective only upon the death of that income beneficiary.

Other beneficiaries: Rhode Island Hospital (16.66%), Miriam Hospital (16.66%), Women & Infants Hospital (16.66%), Wellesley College (8.33%), and Brown University (8.33%);

- e. The Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement dated November 18, 1971, sometimes known as the Combined Marie A. Townsend and Herbert G. Townsend Fund
Total valuation: \$19,811,058.44 as of September 30, 2022
SJHSRI's 33.33% share: \$6,603,686.15
Other beneficiaries: Rhode Island Hospital (33.33%) and Women & Infants Hospital (33.33%); and
- f. The Harold A. Sweetland Fund
Total valuation: \$912,995.19 as of September 30, 2022
Life income beneficiary: Jean Corcoran
SJHSRI's 33.33% remainder share: \$304,331.73
Other remainder beneficiaries: Rhode Island Hospital (33.33%) and Women & Infants Hospital (33.33%)

20. Bank of America, N.A. is the Trustee for all the Subject Trusts.

21. As noted, on December 13, 2019, CCCB, SJHSRI, and RWH filed a petition with the Rhode Island Superior Court for judicial dissolution and liquidation of assets and affairs of CCCB, SJHSRI, and RWH pursuant to R.I. Gen. Laws §§ 7-6-60(a)(3) and § 7-6-61.

22. On May 6, 2020, Receiver Hemmendinger advised the Court that he had entered into an agreement with the Plan Receiver that the Plan Receiver could file a proof of claim in the Liquidating Receivership on behalf of all Plan participants, and that individual Plan participants were not required to file separate proofs of claim in their capacity as Plan participants. On May 22, 2020, the Court approved and ratified that agreement.

23. On May 10, 2020, the Plan Receiver in that capacity and on behalf of all members of the Plan filed his proof of claim ("Plan Receiver's Proof of Claim") in the Liquidation Proceedings.

24. The Plan Receiver's Proof of Claim states in pertinent part as follows:

The Debtors are jointly and severally liable to the Plan Claimants as reflected in the Federal Complaint and the Settlement Agreement^[7] [for Settlement A]. The Debtors have admitted in the Settlement Agreement that they are jointly and severally liable to the Plan Claimants for (inter alia) breach of contract in the amount of damages of at least \$125,000,000.00, less the \$12,596,253.48 that the Debtors paid in October 2019 pursuant to the Settlement Agreement, and less the \$84,949.43 that the Debtors paid pursuant to the Settlement Agreement shortly before filing their petition for judicial liquidation. Debtors' total liability to the Plan Claimants includes the amount necessary to fully fund the Plan, which fluctuates based on investment returns and disbursements. Said amount was owed by the Debtors as of December 18, 2019, and is now due to the Plan Claimants from the Debtors.

25. The Heritage Hospitals, CCCB, and Receiver Hemmendinger did not dispute the Plan Receiver's Proof of Claim.

26. Receiver Hemmendinger, on behalf of SJHSRI and RWH, received distributions from the Subject Trusts since the commencement of the liquidating receivership. His annual receipts from all of the Subject Trusts ranged from \$447,613.08 (in 2020) to \$495,323.80 (in 2021), being the Heritage Hospitals' *pro rata* shares of the distributable income of the Subject Trusts which fluctuate from year to year.

27. On February 27, 2022 the Plan Receiver filed a Petition to Apply Trust Income to the Plan which sought an order a) directing Receiver Hemmendinger to pay to the Plan Receiver the accumulated income or distributions to date from the Subject Trusts and b) directing Bank of America, N.A., as trustee of the Subject Trusts, to pay any and all future income or distributions from the Subject Trusts directly to the Plan Receiver for the benefit of the Plan.

⁷ The "Settlement Agreement" referred to in this excerpt from the Plan Receiver's Proof of Claim was for Settlement A.

28. On April 7, 2022 the order of the Court was entered granting the Plan Receiver's Petition, a) directing Receiver Hemmendinger to pay to the Plan Receiver "all of the accumulated income or distributions" he had received as of March 28, 2022 from the Subject Trusts, and b) directing Bank of America, N.A., as trustee of the Subject Trusts, to pay "any and all future income or distributions" from the Subject Trusts directly to the Plan Receiver for the benefit of the Plan.

29. Receiver Hemmendinger provided a copy of that order to Bank of America, N.A.

30. On April 19, 2022, Receiver Hemmendinger paid the Plan Receiver the sum of \$1,005,776.00 which represented all of the accumulated income and distributions that Receiver Hemmendinger had received as of March 28, 2022 from the Subject Trusts.

31. Notwithstanding that Bank of America, N.A. had been ordered to make future payments directly to the Plan Receiver, Bank of America, N.A., apparently inadvertently, continued to pay a portion of such sums to Receiver Hemmendinger, totaling \$133,574.04. On September 20, 2022, the Liquidating Receiver forwarded said sums to the Plan Receiver, which represented the income and distributions paid from the Subject Trusts as of the date thereof.

32. The Plan Receiver has deposited the net proceeds of such sums into the assets of the Plan and the Plan Receivership.

33. On November 17, 2022, the Plan Receiver and Receiver Hemmendinger filed a Joint Petition (in both the Plan Receivership and Liquidating Receivership) to discharge Receiver Hemmendinger and to appoint the Plan Receiver as permanent Liquidating Receiver of SJHSRI, RWH, and CCCB. On December 16, 2022, that Joint

Petition was granted, Receiver Hemmendinger was discharged, and Stephen Del Sesto was appointed permanent Liquidating Receiver of SJHSRI, RWH, and CCCB.

34. Through the Federal Court Litigation, the Plan Receiver has recovered nearly \$50,000,000 and applied the net proceeds thereof to the assets of the Plan and the Plan Receivership. Nevertheless, the assets of the Plan remain grossly insufficient to meet Plan liabilities. Plan assets are valued at \$67,872,555.00 as of July 31, 2022. According to the most recent estimate determined by the Plan's actuary, for the Plan year ending June 30, 2022, the Plan would need current assets of more than \$192,000,000 to pay anticipated future benefits when they come due, based on a two-year average of interest rates.

35. The shortfall of the Plan is due to, *inter alia*, the Heritage Hospitals' failure to adequately fund the Plan, the sale of the Heritage Hospitals' assets on June 20, 2014, and the insufficiency of the Heritage Hospitals' remaining assets. None of these events were or even could have been known to or anticipated by any of the settlors of the Subject Trusts.

36. The Plan currently pays about \$11,600,000 per year in monthly benefit payments, retroactive benefit payments, and other payments and fees related to Plan maintenance and services. Once the Plan assets are exhausted, the future annual receipts of an additional approximately \$450,000 – \$500,000 from the Subject Trusts will not be sufficient to pay benefits which would then be due. If such receipts were to be allocated *pro rata* to individuals entitled to benefits, the result would be a distribution of at most a few cents for every dollar to which Plan beneficiaries would be entitled. In fact, the expenses associated with administering the Plan and making that distribution would substantially reduce or even eliminate the amount available to be distributed.

37. The insufficiency of Plan assets will not necessarily result in the Plan participants failing to receive all of the benefits to which they are entitled. Although at all times prior to the Plan Receivership the Plan was administered as a church plan exempt from the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), since his appointment the Plan Receiver has administered the Plan in accordance with ERISA. Further, on September 14, 2022, the Court in the Federal Court Action granted partial summary judgment in favor of the Bishop of Providence, a corporation sole, the Diocesan Service Corporation, and the Diocesan Administration Corporation (the “Diocesan Defendants”), declaring that the Plan ceased qualifying as an exempt church plan by April 29, 2013, at the very latest, and was therefore subject to ERISA at least as of that date. Other claims by the Plaintiffs against the Diocesan Defendants remaining in that litigation continue. These developments raise the possibility that if the Plan is terminated with insufficient assets to pay all benefits that are due, Pension Benefit Guaranty Corporation (“PBGC”) may take over the Plan and pay all guaranteed benefits that are due. However, the unique circumstances of this case present issues of first impression concerning PBGC coverage. Moreover, even though it is possible that the Plan ultimately will be terminated and taken over by PBGC, unless and until that occurs, the Plan Receiver has an obligation as administrator of the Plan to seek to recover all assets that may be available to meet Plan liabilities, such as the Heritage Hospital’s shares of the Subject Trusts.

38. Section 66 of the Restatement (Third) of Trusts states in pertinent part as follows:

§ 66 Power of Court to Modify: Unanticipated Circumstances

(1) The court may modify an administrative or distributive provision of a trust, or direct or permit the trustee to deviate from an administrative or

distributive provision, if because of circumstances not anticipated by the settlor the modification or deviation will further the purposes of the trust.

Restatement (Third) Trusts § 66. See Restatement (Third) Trusts § 66, cmt b (2003) (“If appropriate to the circumstances prompting the court action, and to the purposes and other circumstances of the trust, the court may so modify the terms of the trust as to require prompt termination.”).

39. That provision of the Restatement (Third) of Trusts has been applied in Rhode Island:

Although this Court finds that termination of the Trust is authorized under the doctrine of consent of the beneficiaries, consistent with Section 65 of the Third Restatement, this Court also finds that it would have the authority to terminate the Trust, even without unanimous consent of the beneficiaries, under the doctrine of equitable deviation. As articulated in Section 66 of the Third Restatement, a court may modify a trust by equitable deviation if there has been a change in circumstances unanticipated by the Settlor and such deviation will further the purpose of the trust. (Restatement (Third) *Trusts* § 66 (2003)). **Early termination is among the trust deviations authorized by this Restatement section.** See Restatement (Third) *Trusts*, § 66, comment b (2003).

Prince v. Lynch, No. PB 99-5806, 2008 WL 4761484, at *17-18 (R.I. Super. October 22, 2008) (Silverstein, J.) (emphasis supplied).

40. “Section 66 does not require the consent of all of the beneficiaries, but requires a showing of changed circumstances. It is not necessary that the situation be so serious as to constitute an ‘emergency’ or to jeopardize the accomplishment of the trust purposes. Section 66 aims to ‘[g]ive effect to what the Settlor’s intent would have been had the circumstances in question been anticipated.’ *Id.*, comment a.” Prince v. Lynch, *supra*, at *18 (quoting Restatement (Third) Trusts, § 66, comment a (2003)).

41. Section 66 sets forth the procedure to be followed by the Court in considering whether termination (including partial termination) is required under the doctrine of equitable deviation:

In the event of termination under the rule of this Section, the trust property is to be distributed in accordance with the trust purposes and the settlor's probable intention.

Upon a showing of changed circumstances, or a petitioner's credible presentation that relevant circumstances were unknown to the settlor, the burden of persuasion shifts to the person(s) seeking to show that the circumstances were anticipated by the settlor during the formulation and execution of the trust. Failure to provide in the terms of trust for subsequent developments involved in a case reinforces an inference that the circumstances were not anticipated by the settlor.

Then, upon a finding of unanticipated circumstances, the court must further determine whether a proposed or contemplated modification or deviation would tend to advance (or, instead, possibly detract from) the trust purposes. This latter inquiry is likely to involve a somewhat subjective process of attempting to infer the relevant purpose or purposes of a trust from the general tenor of its provisions and from the nature of the beneficial interests, together with the family or personal relationships involved in the trust. In this process, it is appropriate that courts act with particular caution in considering a modification or deviation that can be expected to diminish the interest(s) of one or more of the beneficiaries in favor of one or more others.

Restatement (Third) Trusts, § 66, comment b (2003).

42. The sales of the Heritage Hospitals' assets to for-profit entities without adequately funding the Plan are circumstances that the settlors of the Subject Trusts could not have known of or anticipated. The purposes of the Subject Trusts were to enable the Heritage Hospitals to meet their liabilities, as was recognized by the Rhode Island Attorney General's approval of the 2014 Asset Sale, which was expressly conditioned upon the Heritage Hospitals' retaining their interests in the Subject Trusts. The relief requested herein is necessary to accomplish the settlors' purposes.

43. The Court has already, in its April 7, 2022 Order, determined that the income and distributions from the Subject Trusts should be paid to the Plan Receiver.

44. However, the Plan Receiver's receipt of merely the annual income from the Subject Trusts will make the purposes of the Subject Trusts impossible as to the Plan,

especially if and when the Plan's other assets are exhausted, since they would be insufficient to keep the Plan going long enough even to receive such income streams in future years. Under that eventuality, the Subject Trusts' purposes would be frustrated.

45. Although particular caution should be exercised in such circumstances, the doctrine of equitable deviation permits the Court to order that a trust corpus be invaded for the benefit of one beneficiary even if another beneficiary is prejudiced thereby. Restatement (Third) Trusts, § 66, cmt b (2003) ("In this process, it is appropriate that courts act with particular caution in considering a modification or deviation that can be expected to diminish the interest(s) of one or more of the beneficiaries in favor of one or more others.").

46. Thus, the doctrine of equitable deviation permits the Court to allow a trust corpus to be distributed to a party having only an income interest, even though the trust does not so provide and such invasion of the corpus would prejudice the interests of remaindermen. See, e.g., Restatement (Third) Trusts, § 66, comment b, Illustration 2 (2003):

2. S left his estate to T as trustee with a direction to pay the trust income to L for life and, upon her death, to terminate the trust and distribute the remainder to R if then living and if not then to R's issue. Some years after S's death, L encountered a series of health problems that will result in major medical expenses and require expensive care over the rest of her lifetime. It appears from the circumstances and other evidence bearing on the planning of S's estate that L was the primary object of his bounty but that, given the size of the trust estate, S anticipated that L could live comfortably on its income or even a part thereof. Although the terms of the trust do not authorize T to invade principal, the court may modify the trust provisions to enable T to do so as necessary to meet L's additional needs.

47. However, no prejudice to the co-beneficiaries would result from the relief requested herein. None of the Subject Trusts provides for any increase in the rights of other co-beneficiaries of the Subject Trusts in the event SJHSRI or RWH ceases to exist

or if for any reason SJHSRI's and RWH's interests in the Subject Trusts are terminated. Indeed, if this petition is granted, the Heritage Hospitals' co-beneficiaries will receive exactly the sums they would receive if this Petition had not been granted. The co-beneficiaries' interests remain unaffected.

48. Accordingly, in this case the interests of the other co-beneficiaries will not be prejudiced by distribution of the trust corpora to the Plan Receiver in proportion to the interests of the Heritage Hospitals.

49. For example, the beneficiaries of the Combined Marie A. Townsend and Herbert G. Townsend Fund are Rhode Island Hospital, the Providence Lying-In Hospital (now known as Women & Infants Hospital), and SJHSRI, in equal (1/3) shares. The effect of the relief sought hereunder would be that one third of the trust corpus would be paid to the Plan Receiver, the remaining beneficiaries would be solely Rhode Island Hospital and the Providence Lying-In Hospital (now known as Women & Infants Hospital), who going forward would receive distributions in equal (1/2) shares, and there would be no economic change to the interests of those co-beneficiaries.

50. No third parties will be affected or injured by the disbursement to the Plan Receiver of the corpus of the trusts in which the Heritage Hospitals have an interest. For example, none of the Subject Trusts provides for contingent beneficiaries or any remainder interests in the event the Heritage Hospitals' interests in any of the Subject Trusts are terminated or the corpus corresponding to their interests is distributed for any reason.

51. Under these circumstances, the appropriate course is to direct the Trustee, Bank of America, N.A., to distribute to the Plan Receiver the corpora of the Subject Trusts proportionate to the interests of the Heritage Hospitals, so that Plan benefits can be paid

in full for as long as possible. None of the other beneficiaries of the Subject Trusts will suffer any harm from such distribution. Such distribution will simply advance the interests of efficiency and justice.

52. Bank of America, N.A. as Trustee for all the Subject Trusts is being served with this Petition with the request and expectation that it will provide a copy hereof to the other co-beneficiaries of the Subject Trusts.

53. Further, the Plan Receiver will provide notice of the hearing thereon, including instructions regarding how each notified party may obtain a copy of this Petition, upon all other interested parties known to him in connection with both the Plan and Liquidating Receiverships.

54. The Plan Receiver believes that this constitutes sufficient notice of this Petition and of the request for relief set forth herein.

WHEREFORE Petitioner respectfully requests that the Court order and direct that:

a. The Heritage Hospitals' shares of the corpora of the Subject Trusts (other than the Harold A. Sweetland Fund) be distributed by the Trustee Bank of America, N.A. to the Plan Receiver to be applied to the assets of the Plan, after payment of attorneys' fees as previously approved by the Court and payment of such other expenses as may be subsequently approved by the Court;

b. that the terms of such Subject Trusts be modified to terminate them only as to the Heritage Hospitals, and that the remaining co-beneficiaries' interests be adjusted so as to ensure they are not prejudiced;

c. that SJHSRI's share of the corpus of the Harold A. Sweetland Fund, effective only upon the death of its existing income beneficiary, be distributed by the Trustee Bank of America, N.A. to the Plan Receiver to be applied to the assets of the

Plan, after payment of attorneys' fees as previously approved by the Court and payment of such other expenses as may be subsequently approved by the Court; and

d. that thereafter the Subject Trusts be administered solely for the benefit of the remaining co-beneficiaries of such trusts.

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
spsheehan@wistbar.com
bledsham@wistbar.com

Dated: January 9, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on the 9th 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, 26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Richard J. Land, Esq.
Chace Rutenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crflp.com

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

George E. Lieberman, Esq.
Gianfrancesco & Friedmann
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

Stephen Morris, Esq.
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908
stephen.morris@ohhs.ri.gov

Maria R. Lenz, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
mlenz@riag.ri.gov

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

W. Mark Russo, Esq.
Ferrucci Russo, P.C.
55 Pine Street, 4th Floor
Providence, RI 02903
mrusso@frlawri.com

Jeffrey W. Kastle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
jwk@olenn-penza.com

Howard Merten, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com

William M. Dolan, III, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
wdolan@apslaw.com

Ekwan Rhow, Esq.
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Licenberg & Rhow, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067-2561
erhow@birdmarella.com

Preston Halperin, Esq.
Christopher J. Fragomeni, Esq.
Dean J. Wagner, Esq.
Savage Law Partners
564 South Water Street
Providence, RI 02903
phalperin@shslawfirm.com
chris@savagelawpartners.com
dwagner@savagelawpartners.com

Thomas S. Hemmendinger, Esq.
Sean J. Clough, Esq.
Lisa M. Kresge, Esq.
Ronald F. Cascione, Esq.
Brennan Recupero Cascione Scungio
McAllister LLP
362 Broadway
Providence, RI 02909
themmendinger@brcsm.com
sclough@brcsm.com
lkresge@brcsm.com
rcascione@brcsm.com

Steven J. Boyajian, Esq.
Daniel R. Sullivan, Esq.
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903
Sboyajian@rc.com
dsullivan@rc.com

Julia Harvey, Esq.
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903
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.

/s/ Benjamin Ledsham