

§ 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) of Trusts § 66.

As laid out in the Petition, the Restatement provides a procedure for the Court to follow in making such a determination. This consists of first determining that there has been a change of circumstances that were unknown to the settlor, and then determining if the proposed deviation from the terms of the trust would advance or detract from the trust purposes. *See* Restatement (Third) Trusts § 66, cmt b (2003). *See also Prince v. Lynch*, No. PB 99-5806, 2008 WL 4761484, 39-40 (R.I. Super. Oct. 22, 2001). In this case, relevant circumstances for the Court's consideration include the current state of the Plan's assets and obligations; other potential future outcomes for the Plan, including the possibility that the PBGC will take over the Plan; and the resulting benefit to the Plan if the corpora were to be distributed. Although the Petitioner has provided some of this information in the Petition, additional information about all potential outcomes for the Plan may assist the Court in evaluating whether the proposed deviation would support the purposes of the trusts.

Specifically, should the Court find that there has been an unforeseen change in circumstances, the Court "would need to evaluate whether termination of the Trust and a distribution of the Trust assets ... would give effect to the Settlor's intent had he anticipated the changed circumstances." *Prince v. Lynch* at 42-43. Whether and how the settlor's intent can be realized is impacted by the possibility that the Plan would be taken over by the PBGC. It is unclear from the information currently provided to the Court whether such a takeover would allow the Plan to meet its obligations to its beneficiaries without requiring the amendment of the trust terms.

Given the significance of distributing the trust corpora, the likelihood of the Plan being taken over by the PBGC is a relevant consideration. Terminating the trusts and distributing the assets into the Plan would not advance the purpose of the trusts if the Plan obligations were otherwise met by the PBGC. Information that may be useful to the Court could include information about any specific showings that the Plan would have to make to the PBGC in seeking a takeover, any legal issues of first impression that would have to be considered in the determination, and any conversations the Plan has had with the PBGC to date regarding the Plan's status under ERISA. Similarly, the Court may seek additional information about the extent to which the proposed changes to the trust terms would extend the Plan's ability to meet its obligations, considering anticipated interest and costs.

Respectfully submitted,

STATE OF RHODE ISLAND

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 27th day of January 2023, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Ellen Golde