Case Number: PC-2019-11756

Filed in Providence/Bristol County Superior Court

Submitted: 1/27/2023 11:21 AM

Envelope: 3960203 Reviewer: Carol M.

STATE OF RHODE ISLAND PROVIDENCE, SC.

SUPERIOR COURT

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ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.

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

:

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ST. JOSEPH HEALTH SERVICES :

OF RHODE ISLAND RETIREMENT :

PLAN, AS AMENDED

In re:

CHARTERCARE COMMUNITY BOARD, : C.A. No. PC-2019-11756

ST. JOSEPH HEALTH SERVICES OF :

RHODE ILSAND and ROGER :

WILLIAMS HOSPITAL :

RESPONSE OF THE RHODE ISLAND ATTORNEY GENERAL TO THE RECEIVER'S PETITION TO PARTIALLY DISTRIBUTE CORPORA OF CERTAIN TRUSTS

Now comes Attorney General Peter F. Neronha ("Attorney General") and hereby files this Response to the Receiver's Petition to Partially Distribute Corpora of Certain Trusts ("Petition").

In reviewing the petition and applicable law, the Attorney General recommends that the Court seek additional information before making a determination regarding this Petition. Specifically, the Attorney General recommends that the Court seek additional information from the Petitioner regarding (1) the possibility that the Pension Benefit Guaranty Corporation ("PBGC") may take over the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan") in the event that the Plan is terminated with insufficient assets to pay the benefits due and (2) the extent to which distribution of the lump sums of the corpora will meet the anticipated shortfall of the Plan.

The Petitioner seeks an order from the Court under its powers of equitable deviation, as described in Section 66 of the Restatement (Third) of Trusts:

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§ 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.

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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

By Its Attorneys,

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Dated: January 27, 2023

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 27^{th} 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___