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# Receiver, AG clash in fallout from St. Joseph's-Fatima pension collapse

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PROVIDENCE, R.I. — The legal battle over the collapse of the St. Joseph's and Our Lady of Fatima Hospital pension plan has taken a decidedly ugly turn, as the court-appointed receiver recently took aim at Attorney General Peter F. Kilmartin's office, accusing it of violating state law and "failing to mind the store," among other allegations.

The office hit back this week, asking the court to strike from the record the "serious and gratuitous" commentary by court-ordered receiver Stephen Del Sesto and his special counsel, Max Wistow.

"Leveling unfounded accusations of wrongdoing at an opposing counsel is a serious matter. To date, the pleadings have contained invective, bombast and generally insulting language that have rightly been given short shrift by the court and by the attorney general," Assistant Attorney General Rebecca Partington wrote. "But the receiver's allegations regarding criminal and illegal conduct by the members of the Office of the Attorney General have now crossed a line, and are made more troubling, as they are made by an appointee of the Court, and therefore serve to undermine the public trust in the state's top legal officer."

Partington is referring to a document filed by Del Sesto, the receiver overseeing the insolvency of the pension plan for 2,700-plus retired and current nurses and other workers potentially facing dramatic cuts. Wistow is working with Del Sesto as special counsel investigating the failed plan.

While the receiver last month reached a proposed settlement with three defendants in the pension case, the attorney general's office has objected to the inclusion of terms that seek to transfer a charitable fund — the CharterCARE Foundation — to the receiver, court papers show. The office is not a defendant in the receivership case, but is acting in its regulatory capacity as "protector of trusts and charitable assets" in Rhode Island.

As such, Kilmartin asked Superior Court Judge Brian Stern to determine if the $8.2 million in charitable donations contained in the Foundation should be used to help pay down the pension liability, given that they were donated with specific purposes in mind, such as cancer research.

"Many of the affected funds are earmarked for very specific uses, none of which appears to comport with funding pension liability," the office wrote.

**The state's objections** prompted a strong response from Del Sesto and Wistow, who accuse Kilmartin of "grasping at straws to justify his opposition" and "failing to mind the store" by approving the 2014 sale of Fatima Hospital and Roger Williams Medical Center to California-based Prospect CharterCare.

"In fact that opposition is based upon the callous disregard for the rights of the plan participants to the pensions they earned, and preference for the for-profit operations of Prospect CharterCare," Wistow wrote.

They allege that Kilmartin "completely disregarded, affirmatively violated, and allowed others to violate" state laws governing transfers in hospital ownership in signing off on the sale to Prospect CharterCare. In addition, they charge that Kilmartin violated the law again in transferring oversight of the charitable fund from the Superior Court presiding justice to Kilmartin himself — a "power grab ... that ultimately benefited private interests that had no right to the funds."

The court filing by Del Sesto promises "more revelations ... equally ... damaging by the Attorney General" and assert that he is "an actor with unclean hands."

It's those allegations and others that prompted the office to take the unusual move of asking Stern, who presides over the case, to order that they be stricken from the record and removed from the documents.

“These allegations are false, and far exceed the scope of the receiver’s authority, are not necessary to the resolution of the issues in this case and go beyond the bounds of mere commentary,” Partington wrote. “To make facile allegations of criminal activity in a pleading filed with the court far exceeds the scope of his authority.”

Del Sesto disagreed with the state’s characterization Thursday. “It is my position and I stand by it. These are theories we’ve developed over months ...” Del Sesto said.

“I’m not accusing anyone of anything. I’m saying it looks as if things were done improperly,” he said.

**The St. Joseph’s** Health Service pension crisis came to light in August 2017, when the managers of the pension plan asked the court to put it in receivership, saying that it didn’t have enough assets to pay its 2,700-plus beneficiaries. They asked the court to approve a 40-percent, across-the-board benefit cut.

The $95-million pension fund was declared insolvent three years after the sale to Prospect CharterCare.

Del Sesto objected to the proposed benefit cut and brought on Wistow as special counsel to help recover any available assets.

In June, the receiver filed class-action lawsuits in state and federal court accusing those involved in the 2014 hospital sale, including Prospect executives and Roman Catholic Bishop Thomas Tobin, of concealing the financial problems of the pension fund from regulators, to shield their own liability. The lawsuits are seeking to recover money for the plan’s participants.

The sale to Prospect CharterCare, approved by the attorney general’s office and the state Department of Health, included a $14-million payment into the pension, but left the plan without a source of revenue other than investment returns. Employer contributions recommended by plan actuaries were not made for years, and the plan was estimated to be about $43 million short of what it needed to meet its obligations.

Last month, DelSesto proposed a $12-million settlement with CharterCare Community Board, St. Joseph Health Services of Rhode Island and Roger Williams Hospital, the former owners of Fatima, Roger Williams and the now-closed St. Joseph's.

Prospect Medical Holdings, Inc. and other Prospect entities oppose the proposed settlement, which must be approved by a judge, arguing that it's a vast overreach by the receiver that prejudices the rights of the non-settling parties. The foundation itself, too, has objected to its terms on the grounds that it would put it "out of business" and force the money to be distributed to plan participants, regardless of the original donors' charitable intent.

According to the settlement document, the special counsel is due around 18 percent of any settlement.