

**HEARING DATE:
THURSDAY, AUGUST 25, 2020 AT 2:00 PM
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.

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

Respondent

Bank of America, in its capacity as Trustee of
Respondent

Nominal Respondent

PC-2017-3856

**RECEIVER'S FOURTEENTH INTERIM REPORT AND THIRTEENTH INTERIM
REQUEST FOR APPROVAL OF FEES, COSTS AND EXPENSES**

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 Fourteenth Interim Report (the "Fourteenth Report") and Thirteenth Interim Request for Approval of Fees, Costs and Expenses (the "Thirteenth Fee Application"). In support of the Fourteenth Report and Thirteenth Fee Application the Receiver states as follows:

1. This case was commenced on August 17, 2017, upon the Petition for the Appointment of a Receiver (the "Petition") filed by St. Joseph Health Services of Rhode Island, Inc. ("Petitioner"). As a result of that Petition, on August 18, 2017, this Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan under surety bond ordered by this Court in the amount of One Million and 00/100 (\$1,000,000.00) Dollars (the "Temporary Receiver Order").

2. The Plan is a defined benefit plan organized by Petitioner on or about July 1, 1965, for the benefit of Petitioner's employees. As of the date of the Petition, the Plan had approximately 2,729 vested participants¹ of which approximately 1,229 were then receiving monthly benefits payments.

3. Typically, a hearing on permanent receiver is set for a date approximately twenty (20) days after the appointment of temporary receiver. Here however, the Petitioner requested that the Court set a hearing date no sooner than thirty (30) days to afford the Temporary Receiver time to consider the Petitioner's suggested 40% uniform benefit reduction. Based on that request, the Court docketed the hearing on permanent receiver for October 11, 2017.

4. Immediately upon appointment, in order to provide pension holders with a direct means to obtain answers to questions and access to information, the Receiver established a dedicated email address (stjosephretirementplan@pierceatwood.com) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated, public website (<https://www.pierceatwood.com/st-joseph-health-services-rhode-island-retirement-plan>) where all pleadings and other information would be posted for easy accessibility to pension holders and other interested parties. Notice of the dedicated email, phone lines and website was sent to all Plan participants via first class mail. The Receiver believes that establishing these various means of communication has been invaluable to the pension holders and the Receiver. Since establishing the email address and phone lines the Receiver has received hundreds of email and voicemail communications from pension holders. The dedicated website has been revised and is updated regularly to include access to filings made in both the State and Federal litigation matters as well as other related litigation and liquidating receivership matters related to this proceeding.

5. Due to their day-to-day involvement with the Plan, the Receiver initially had consistent and regular communications with Bank of America (the Plan's Trustee and custodian of the assets) and Angell Pension Group (the Plan's actuary and benefits administrator at the time) regarding the management and administration of the Plan. The Receiver has reviewed quarterly reports and had

¹ According to documents reviewed by the Receiver, excluding United Nurses and Allied Professionals Local 5110 ("UNAP") members hired before October 1, 2008, the Plan was closed to all employees on or about October 1, 2007. Thereafter, benefit accruals were frozen for non-union employees on September 30, 2009, for Federation of Nurses and Health Professionals and other non UNAP union employees on September 30, 2011 and for UNAP employees on June 19, 2014.

periodic discussions with Mercer Investment (the Plan's discretionary Investment Manager) regarding the performance of asset investments, the allocation of the asset investments and market conditions and projections that may impact those investments. The Receiver is aware that, among the pension holders and other interested parties, there existed a level of distrust and concern regarding the pre-receivership administration and oversight of the Plan. As a result, the Receiver made changes regarding the day-to-day management and administration of the Plan and its assets and will continue to evaluate and make changes as may be prudent or necessary.

6. Prior to the COVID pandemic, approximately every 4-6 weeks throughout this proceeding the Receiver hosted "town-hall" style, informational meetings at Rhodes on the Pawtuxet in Cranston, Rhode Island. At these meetings the Receiver provided a current status of the receivership proceedings. In addition and in an effort to assure complete transparency of the receivership process and the Receiver's efforts, the Receiver responds to questions raised by the meeting participants regarding various aspects of the receivership and the Plan. Understanding that not all participants can attend these meetings, the Receiver digitally records each meeting and a link to the meeting recordings are posted to the Receiver's dedicated website and available for unrestricted viewing.

Due to the State gathering restrictions imposed by the Governor during the pandemic and in order to provide pension holders with information, the Receiver has scheduled a Zoom town hall meeting for the month of August. Absent any change in the State safety protocols related to the pandemic, the Receiver will re-commence the town hall meetings in a virtual format going forward.

7. Prior to this Fourteenth Report and Thirteenth Request for Approval of Fees, the Receiver has filed thirteen (13) prior reports with the Court and twelve (12) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Thirteenth Report and related Orders are on file with the Clerk of the Court and accessible on the Receiver's dedicated website and all are incorporated by reference and made a part of this Fourteenth Interim Report as if fully set forth herein.

8. On or about June 28, 2018, as part of the Fourth Report, the Receiver advised the Court that litigation had been initiated in both State Court (Stephen Del Sesto, et. al. v. Prospect

CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (PC-2018-4386)) (the “State Litigation”) and Federal Court (Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (1:18-cv-00328-WES-LDA)) (the “Federal Litigation” together with the State Litigation shall be referred to as the “Litigation”) against various defendants and Special Counsel provided the Court with a status update of those actions and related next steps for the Litigation.

9. On June 1, 2020, this Court held a hearing on the Receiver’s Thirteenth Interim Report (the “Thirteenth Report”) and Twelfth Interim Request for Approval of Fees, Costs and Expenses (the “Twelfth Fee Request”).² Upon conclusion of the hearing, the Court approved the Thirteenth Report and the Twelfth Fee Request and the Order approving the Thirteenth Report and Twelfth Fee Request was entered on July 29, 2020.

10. Since the filing of and hearing on the Thirteenth Report in this Superior Court Receivership action, on or about April 1, 2020, the Receiver filed and Ex Parte Petition to Hire Special Legal Counsel. The Ex Parte Petition sought to re-engage the Receiver’s previously approved special counsel, Jeffery Cohen, Esq, due to his transfer to a new law firm under the same exact terms and conditions. This honorable Court entered an Order approving that Petition on April 17, 2020.

² The Thirteenth Report was filed in March 2020 and originally scheduled to be heard in late March/early April 2020; however, due to the COVID pandemic RI Courts were temporarily shut down and the Thirteenth Report hearing was continued several times until the eventual hearing date of June 1, 2020.

11. Since the filing of and hearing on the Thirteenth Report, the following events have occurred in the Federal Litigation:

- a. On or about March 6, 2020, the Prospect Defendants served your Receiver with their first set of interrogatories and request for the production of documents regarding issues related to principal purpose organization;
- b. On or about April 5, 2020, the Receiver finalized his responses to Defendant Prospect's first set of interrogatories regarding issues related to principal purpose organization;
- c. On or about April 11, 2020, the Prospect Defendants filed a Motion to Extend Deadlines previously stipulated and agreed to in the *Third Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions* entered less than 3 weeks prior on March 18, 2020 (the "3rd Stip Motion");
- d. On or about April 27, 2020, the Receiver and other Plaintiffs filed an Objection to the Prospect Defendants' Motion to Postpone Deadlines (the "3rd Stip Objection");
- e. On or about May 2, 2020, the Prospect Defendants filed a reply to the 3rd Stip Objection;
- f. On or about May 6, 2020, the Court held a Zoom conference regarding the 3rd Stip Motion and 3rd Stip Objection. Following the conference, on or about May 14, 2020, the Court entered the Fourth Order Concerning Limited Discovery and Related Summary Judgment Motions which provided a short extension to the previously stipulated to deadlines;
- g. On or about June 26, 2020, the Diocesan Defendants filed a Response to Plaintiffs' Motion for Summary Judgment on Count IV of the Complaint. On that same day, the Prospect Defendants also filed: (1) a Response in Opposition to the Motion for Summary Judgment on Count IV of the Complaint; (2) a Statement of Disputed Facts; (3) a Statement of Undisputed Facts; and, (4) a Memorandum of Law in Support of the Prospect Defendants' Opposition to the Plaintiff's Motion for Summary Judgment and a Cross-Motion for Summary Judgment;
- h. On or about July 2, 2020, the Prospect Defendants filed an Amended Statement of Disputed Facts; and

- i. On or about July 14, 2020, the parties agreed to the terms of a Fifth Stipulation and Order Concerning Limited Discovery and Related Summary Judgment Motions. The Court entered that document on the same day.

12. Since the filing of and hearing on the Thirteenth Report, the following events have occurred in the CCCB Litigation:
 - a. Due to the COVID pandemic, the hearings on both the CCCB Motion and the Motion to Compel originally scheduled for March 31, 2020, were postponed;
 - b. On or about April 21, 2020, the Liquidating Receiver filed a Verified First Amended and Supplemental Complaint (the "Amended Complaint"). The Amended Complaint was served on all parties;
 - c. On or about June 12, 2020, JP Morgan and the Liquidating Receiver entered a Stipulation extending the time until July 1, 2020, for JP Morgan to file its Answer to the Amended Complaint;
 - d. On or about June 15, 2020, the Prospect Defendants filed their Answer to the Amended Complaint. On that same day, the individually named Defendants filed their Answer as well;
 - e. On or about June 16, 2020, Defendants David & Alexa Topper Family Trust, Ivy Intermediate Holding, Inc. and Ivy Holdings Inc. and the Liquidating Receiver entered a Stipulation extending the time until June 25, 2020, for those defendants to file their Answer to the Amended Complaint;
 - f. On June 18, 2020, both the Liquidating Receiver and your Receiver filed a Memorandum in reply to the Memorandum of the Prospect Defendants in support of their objections to the Motions of your Receiver and the Liquidating Receiver for injunctive relief and to compel production;
 - g. On or about June 22, 2020, Defendants Green Equity Investors V, LP and Green Equity Investors Side V, LP and the Liquidating Receiver entered a Stipulation extending the time until July 6, 2020, for those defendants to file their Answer to the Amended Complaint;

- h. On or about June 25, 2020, Defendants David & Alexa Topper Family Trust, Ivy Intermediate Holding, Inc. and Ivy Holdings Inc. filed their Answer to the Amended Complaint;
- i. On or about July 2, 2020, JP Morgan filed a Motion to Dismiss the Amended Complaint;
- j. On or about July 15, 2020, Defendants Green Equity Investors V, LP and Green Equity Investors Side V, LP filed a Motion to Dismiss the Amended Complaint;
- k. On July 20, 2020, the parties entered into a Stipulated Briefing Schedule; and
- l. On or about July 21, 2020, the Court entered an Order reserving in part, granting in part and denying in part your Receiver's and the Liquidating Receiver's Motion to Compel.

13. Since the filing of and hearing on the Thirteenth Report, the following events have occurred in the Liquidating Receivership:

- a. On March 30, 2020, the Court entered an Order granting the Liquidating Receiver's Petition to Engage Accountants;
- b. On or about May 6, 2020, the Liquidating Receiver filed his First Interim Report. Following a hearing on May 22, 2020, on the First Interim Report, the Court entered an Order approving the First Interim Report;
- c. On or about July 10, 2020, your Receiver and the Liquidating Receiver (collectively the "Receivers") filed a Motion seeking an order enjoining Adler Pollock & Sheehan PC ("AP&S") and its attorneys from (a) representing the Prospect Entities in matters relating to the Change in Effective Control proceedings pending before the Rhode Island Department of Health and the Hospital Conversion Act proceedings pending before the Attorney General; and from (b) sharing their knowledge or work product with the Prospect Entities or successor counsel (the "AP&S Motion"). On or about July 27, 2020, the Receivers filed a Supplement to the AP&S Motion;
- d. On or about July 27, 2020, AP&S filed an Objection to the AP&S Motion;
- e. On or about July 28, 2020, the Receivers filed a Second Supplement to the AP&S Motion;

- f. On or about August 11, 2020, the Receivers filed a Third Supplement to the AP&S Motion; and
- g. On or about August 14, 2020, AP&S filed a Supplement to its Objection to the AP&S Motion.

14. Your Receiver, along with the Liquidating Receiver and several other parties have filed formal objections to the Prospect Entities and related entities and individuals' application for a Change in Effective Control pending before the Rhode Island Health Services Council ("RIHSC"). Despite the Receiver's and Liquidating Receiver's Objections submitted to the RIHSC and the pending Motion seeking to enjoin AP&S, the RIHSC permitted the initial hearing to proceed with AP&S as counsel rather than wait for this Court's ruling on the Motion. Ultimately, the application will be presented to the Rhode Island Department of Health and Rhode Island Department of the Attorney General under the Rhode Island Hospital Conversion Act.

15. Although your Receiver and some of the litigation defendants have engaged in general settlement discussions, no proposed settlements have been reached since the Federal Court's final approval of the CCCB and CCF Settlements which resulted in a \$13,112,826.40 NET benefit to the Plan.

16. In the Order Appointing Permanent Receiver (the "Permanent Receiver Order") entered on October 27, 2017, this honorable Court established the Receiver's duties with respect to the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan). The Order generally authorizes the Receiver to monitor, manage and administer the Plan and its assets on behalf of its participants and beneficiaries. Among other actions, the Receiver may engage actuaries, investment advisors, benefit administrators and other professionals to perform various administrative tasks and services for the Plan. The Receiver may also initiate and litigate claims against third parties on the Plan's behalf, acquire and dispose of property, direct investments and pay Plan-related expenses from the assets held in trust.

17. Since the Thirteenth Report, due to the COVID pandemic the Receiver was forced to postpone the town-hall style, informational meetings. The next meeting will be virtual and is scheduled for August 19, 2020.

18. The Receiver continues to receive and review documents related to the Plan and its history. GRS, the Receiver's Plan actuary, has been able to complete its intake and analysis of all information relative to the Plan and is fully engaged regarding benefits administration of the Plan.

19. With regard to Plan assets, since the inception of this proceeding in August 2017, the Plan assets (without the inclusion of the Settlement A and Settlement B proceeds) have reduced by approximately twenty-six percent (26%). As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In months since (as of June 30, 2020), the Plan assets totaled approximately \$60,689,430.74.³ The largest factor in the reduction of the Plan assets is monthly benefit payments. It is important to note that during the months since the inception of this proceeding the Plan paid out monthly benefit payments, retroactive benefit payments and other payments and fees related to Plan maintenance and services at an average rate of approximately \$941,000 per month. At that average rate the Plan had net negative cash flow of approximately \$26,300,000.

To add to the volatility of the investments, the COVID pandemic had a dramatic impact on the market. However, during the prior year in an effort to protect and insulate the Plan from dramatic market fluctuations, the Receiver adjusted the allocation of assets for investment risk. This reallocation was somewhat successful in insulating the Plan from COVID related losses in that when the market was down almost 25%, the Plan investments were only down approximately 10% during that same period.

20. In connection with the administration of the within proceeding, as of the filing of the Thirteenth Report on or about March, 2020, your Receiver had cash-on-hand totaling \$3,582,648.07. Since that time, your Receiver has had no additional receipts and has had

³ This amount does not include the Settlement "A" or Settlement "B" NET settlement proceeds discussed in Paragraph 15, above.

additional disbursements totaling \$34,686.33, leaving current cash-on-hand in the sum of \$3,547,961.74, all as set forth in the “**Schedule of Receipts and Disbursements**” attached hereto.⁴

21. In connection with this Fourteenth Report, your Receiver is requesting that the Court approve the Thirteenth Fee Application incurred for the three and one-half (3 ½) month period from April 15, 2020, through, and including, July 31, 2020, totaling approximately \$115,000. The Receiver respectfully requests that this Court approve the Thirteenth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver’s Thirteenth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Fourteenth Report. Due to the Litigation and the related descriptions and narratives in time entries, to avoid any potential disclosure, strategy, attorney-client privileged communications, etc., the Receiver requests that the redacted invoices submitted to the Court be filed under seal.

WHEREFORE, your Receiver prays that this honorable Court enter an order or orders: (1) approving, confirming and ratifying all of the Receiver’s acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Fourteenth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Thirteenth Fee Application for his services as Temporary and Permanent Receiver herein; (3) directing that this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the Receivership Estate; and (4) granting such further relief as this Honorable Court deems necessary and appropriate.

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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Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: August 19, 2020

⁴ Cash-on-hand includes the funds received from Settlement “B”. The Receiver will be filing a Petition for Instructions in the coming weeks seeking instruction from the Court regarding the deposit of those funds into the Plan.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2020, 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

SCHEDULE OF RECEIPTS AND DISBURSEMENTS

**St Joseph Health Services of RI Retirement Plan
 Transactions by Account 081920
 As of August 19, 2020**

08/19/20

Accrual Basis

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
BankRI Checking Account						
05/05/2020	348	Relevant Discover-e	Inv #6883; copying & postage		3,043.19	3,582,648.07
05/05/2020	349	ECG Management Consultants	Nov 2019 - Feb 2020 fees for valuation		13,047.31	3,579,604.88
05/13/2020	350	Relevant Discover-e	Inv #7055; copying, envelopes & postage		9,910.05	3,566,557.57
07/21/2020	351	The Hilb Group of New England...	Inv #988524		5,000.00	3,551,647.52
07/30/2020	352	Relevant Discover-e	Inv #7324; copying & postage		3,634.78	3,548,012.74
08/19/2020	353	Linda Cordeiro	070820 hearing transcript		51.00	3,547,961.74
Total BankRI Checking Account				0.00	34,686.33	3,547,961.74
TOTAL				0.00	34,686.33	3,547,961.74