

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND)

v.)

) CASE #: PC-2017-3856

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE BRIAN P. STERN, ASSOCIATE JUSTICE

REMOTELY ON FEBRUARY 11, 2022

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE PLAINTIFFS
STACEY NAKASIAN, ESQUIRE.....FOR BEACON MUTUAL
PATRICIA ANTONELLI, ESQUIRE.....FOR BEACON MUTUAL

**GINA GIANFRANCESCO GOMES
COURT REPORTER**

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 10, inclusive, are a transcript of a remote hearing done to the best of my ability.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 FRIDAY, FEBRUARY 11, 2022

2 MORNING SESSION

3 (The following proceeding was conducted remotely:)

4 THE COURT: Madam Clerk, if you'd call the case
5 please.

6 THE CLERK: Your Honor, there are actually two,
7 matters before the Court. We have PC-2017-3856, St.
8 Joseph's Health Services of Rhode Island v. St. Joseph's
9 Health Services of Rhode Island Retirement Plan, and
10 PC-2019-11756, In Re: CharterCare Community Board. Both
11 matters are on for the Receiver's joint commission for
12 approval of settlement, Beacon Mutual Insurance, and
13 Rhode Island Department of Labor and Training.

14 Would counsel please identify themselves for the
15 record.

16 MR. DEL SESTO: Good afternoon, your Honor. Stephen
17 Del Sesto, the Plan Receiver.

18 MR. MR. HEMMENDINGER: Thomas Hermendinger,
19 Liquidating Receiver.

20 MR. LEDSHAM: Benjamin Ledsham for the Plaintiffs.

21 MS. NAKASIAN: Good afternoon, your Honor. Stacey
22 Nakasian on behalf of Beacon Mutual.

23 THE COURT: Okay. It's a joint motion so you may
24 proceed. I'm sorry. I just saw Attorney Antonelli. Do
25 you want to put in an appearance or are you just

1 observing?

2 MS. ANTONELLI: Your Honor, I am here representing
3 Beacon Mutual.

4 THE COURT: Perfect. Thank you. The Receivers may
5 proceed.

6 MR. DEL SESTO: Thank you, your Honor. Obviously,
7 this is a joint motion. Attorney Hemmendinger is going
8 to take the lead on the presentation on this one, your
9 Honor.

10 THE COURT: Very good. Please proceed.

11 MR. HEMMENDINGER: Thank you, your Honor. In the
12 housekeeping department, the Plan Receiver sent notice of
13 the petition and the hearing today, not only to counsel
14 of record in this case and related liquidation in these
15 cases, but also to the individual workers' compensation
16 clients, their claimants, and their lawyers to the extent
17 they're known to us or to Beacon, as well as all Plan
18 participants. So fairly broad notice was sent out and
19 anybody who thinks they have a stake in the outcome of
20 this petition did have notice to be here today if they
21 had an objection. I have received no objection or
22 response. I don't think the Plan Receiver has either.

23 MR. DEL SESTO: I have not, your Honor. No
24 objections have been received by my office.

25 MR. HEMMENDINGER: So getting down to the subject

1 matter, your Honor, this all relates to disputes over a
2 pre-receivership self-insured workers' comp. program that
3 St. Joseph's Health Services of Rhode Island had in place
4 for a number of years before it went back to having
5 workers' compensation insurance. There are a handful of
6 pending claims that have survived the start of the
7 receivership and going on for a number of years. Beacon
8 was the third-party administrator under that self-insured
9 program and it would advance payments to the claimants
10 and to the medical providers on a regular basis. St.
11 Joseph would reimburse those advances and then Beacon
12 would periodically seek reimbursement for the benefit of
13 St. Joseph for the payments that St. Joseph had made to
14 Beacon from excess insurance and what is called a
15 second-injury fund that's handled by the Rhode Island
16 Department of Labor and Training.

17 A number of disputes arose during the receivership
18 related to this Plan, and I'll just summarize the basic
19 assertions all of which in substance are disputed by the
20 opposing party. Beacon's assertion is that St. Joseph
21 should continue to reimburse it for the advances it has
22 continued to make to the workers' compensation claimants,
23 and I would point out that to the best of my knowledge,
24 and I'm sure Beacon can confirm this, the individual
25 claimants have not gone without timely payment of

1 benefits during the liquidating receivership. Beacon has
2 filed a proof of claim in the liquidating receivership.
3 It was originally for \$22,000 for the balance that was
4 due as of May of last year. It reserved the right to
5 amend that claim, and the amount that it would otherwise
6 seek, if we weren't settling this, is considerably higher
7 at this point.

8 The Receiver's contentions are that Beacon did not
9 receive or obtain full reimbursement from excess
10 insurance sources and potentially also from DLT
11 second-injury fund and that these payments, had they
12 obtained them, would have been enough to cover everything
13 that St. Joseph's was otherwise obligated to pay. Those
14 disputes led to some exchange of documents and
15 information and ultimately to a set of subpoenas and a
16 contested motion for enforcement of the subpoenas filed
17 by your Receivers. So the proposed settlement that we
18 reached since that time, not only resolves the discovery
19 issues, but it resolves the merits of the controversy.

20 And I'll just summarize the major terms, your Honor.
21 Basically, DLT assumes full responsibility for ongoing
22 administration and payment of the open workers' comp.
23 claims that were covered by the TPA agreement between St.
24 Joseph's and Beacon. Neither Beacon nor DLT will make a
25 claim against either receivership or seek payment or

1 reimbursement from another source that would result in
2 that other source having a claim against either
3 receivership. So essentially there would be no
4 subrogation claims on account of any secondary payment
5 sources.

6 The parties are exchanging releases. Each party is
7 reserving its rights against third parties, obviously,
8 and the Receivers are reserving their rights under
9 contract agreements other than the TPA agreement between
10 St. Joseph's and Beacon and they're also reserving their
11 rights under any excess insurance policies -- actually,
12 any insurance policies, excess or otherwise. The TPA
13 agreement would be terminated on approval by this Court
14 and Beacon will withdraw its proof of claim with
15 prejudice.

16 I would like to just briefly address reasons I think
17 this settlement is in the best interest of both
18 receiverships. As the Court well knows, the liquidating
19 receivership was put in place as part of the litigation
20 settlement between the Legacy Hospital entities and the
21 Plan Receiver, and the major claim in the liquidating
22 receivership is, in fact, the Plan Receiver for the
23 benefit of the Plan participants with a claim of at least
24 \$125 million. It hasn't been liquidated yet but it's on
25 that order of magnitude. So the liquidating receivership

1 is intended to provide as much payment as possible to the
2 retirement plan. And to that end, I have an obligation
3 to reduce or mitigate any other claims, pre-receivership
4 claims, against the liquidating receivership.

5 So looking at the factors the Court generally looks
6 at, probability of success on the merits, and the
7 complexity and expense of the litigation, which are
8 related issues, there are a number of novel, complex
9 legal issues and a number of substantial factual issues
10 here. This would be time consuming and expensive
11 litigation. It certainly couldn't assure success on the
12 merits if we went that far and the interest of the
13 workers' compensation claimants could be affected by the
14 outcome of the litigation on the merits.

15 The other factors, difficulties in collecting on a
16 judgment, that is really not relevant here, your Honor,
17 because Beacon is certainly good for any exposure it
18 might have as is the Department of Labor and Training.
19 But, finally, looking at the paramount issue of
20 creditors, this settlement will take care of the
21 individual workers' comp. claimants, who might otherwise
22 be general unsecured creditors or priority creditors.
23 That's one of the legal issues that would have come up if
24 we had gone on to a ruling on the merits here and the
25 Plan Receiver, who is the largest creditor, as I

1 mentioned, in the liquidating receivership not only
2 supports this settlement but it is actually a party to
3 it. The interest of other creditors are really not
4 affected here because any other claimants in the
5 liquidating receivership are competitors with the
6 retirement plan receivership and this settlement
7 basically takes care of the workers' comp. claimants
8 without any further exposure to the liquidating
9 receivership so there is really no harm to them at all.

10 So we could ask for approval of the settlement and
11 authorization to enforce our rights and reform our
12 obligations under the settlement agreement and I would be
13 happy to answer any questions the Court may have. I
14 don't know if you want to hear from Mr. Del Sesto first
15 but I'll stand by for questions.

16 THE COURT: Why don't we do that. The report was
17 comprehensive. Attorney Del Sesto, do you have anything
18 to add?

19 MR. DEL SESTO: No, your Honor. Unless your Honor
20 has questions that I can answer, I don't have anything to
21 add to Attorney Hemmendinger's presentation.

22 THE COURT: Very good. Does counsel for Beacon or
23 any others which to be heard before the Court rules?

24 MS. ANTONELLI: Your Honor, for Beacon I will say
25 that I confirm what Mr. Hemmendinger said that Beacon met

1 its obligations in terms of making payments throughout
2 the terms of the contract, there haven't been any missed
3 payments and that's it. We support the settlement.

4 THE COURT: First of all, we have a saying among
5 judges that until there is a trial date certain, nothing
6 settles. Whether he was instrumental or not, I want to
7 express my thanks to retired Justice Silverstein. When I
8 sent this to mediation between the parties, connected or
9 not, I am glad it came to a resolution. The Court is
10 very familiar with this case having dealt with some
11 motions as well as interim updates on receivership
12 proceedings. As counsel is well aware, the Court has
13 factors to apply that I won't go through because in the
14 Plan receivership case, the Court has gone through on a
15 number of occasions to determine whether or not the
16 settlement is fair, reasonable, and to the estate's
17 benefit and within the range of reasonableness.

18 I remember well at the beginning of the case there
19 were some issues in terms of documents and it was clear
20 and it was even stated by special counsel that he wanted
21 to seek certain things to get his arms around and
22 determine whether there were any issues. The Plan
23 Receiver and the Liquidating Receiver have reviewed that
24 along with counsel and the Court finds the settlement
25 very much fair, reasonable, and for the benefit of both

1 the liquidating receivership estate and then permanent
2 receivership estate.

3 As far as relief in this case, the Court does
4 approve both the Beacon/DLT settlement agreement. I
5 don't see it in here, but the Court also as part of the
6 settlement needs to approve and ratify the acts and
7 doings of both the Receiver, the Plan Receiver, and
8 special counsel to the Receiver, which includes the
9 evaluation of the party's claims.

10 Based on making those findings, the Court authorizes
11 and instructs the liquidating Receiver to perform his
12 obligations and enforce its rights and remedies of the
13 Beacon/DLT settlement agreement. I authorize and
14 instruct the Plan Receiver to perform his obligations and
15 enforce his rights and remedies under the Beacon/DLT
16 settlement agreement and award the Liquidating Receiver
17 such other relief.

18 I say that only because I went through what was
19 requested plus what I needed to add. If there is
20 anything that I missed, you can include it. What I would
21 ask is that an order be prepared, circulated to counsel
22 to Beacon to make sure everything is laid out properly.
23 This way I won't have to hold it for the requisite five
24 days and I can get that signed and entered. And while I
25 have the Liquidating Receiver and the Plan Receiver, my

1 understanding is, at least in the Liquidating Receiver,
2 we have one other significant issue and I hope to be able
3 to get an update from both of you in the near future in
4 terms of where we stand and where we're going because,
5 ultimately, the goal is to be able to move those moneys
6 from the liquidating receivership to the Plan when we're
7 in a position to close out those estates. Thank you very
8 much, counsel. With that, the Court will be in recess.

9 (A D J O U R N E D.)

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