

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 MARCH 1, 2022

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....RECEIVER
MAX WISTOW, ESQUIRE.....FOR THE RECEIVER
BENJAMIN LEDSDAM, ESQUIRE.....FOR THE RECEIVER
ARLENE VIOLET, ESQUIRE.....FOR PETITIONERS

**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 13, inclusive, are a transcript of a remote hearing done to the best of my ability.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 TUESDAY, MARCH 1, 2022

2 AFTERNOON SESSION

3 (The following proceeding was conducted remotely:)

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

6 THE CLERK: Your Honor, the matter before the Court
7 is PC-2017-3856, St. Joseph's Health Services of Rhode
8 Island v. St. Joseph's Health Services of Retirement
9 Plan. This is on for the Receiver's 22nd interim report
10 and 21st interim request for approval of fees. Would
11 counsel please identify themselves for the record.

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

14 MR. WISTOW: Max Wistow, counsel for the Plan
15 Receiver and for several individual Plaintiffs in the
16 Federal Court.

17 MR. LEDSHAM: Benjamin Ledsham also for Max.

18 MS. VIOLET: Arlene Violet for a group of 350
19 participants in the Pension.

20 MR. HEMMENDINGER: Thomas Hemmendinger, the
21 Liquidating Receiver in the related receivership case.

22 THE COURT: Very good. Attorney Del Sesto, I have
23 reviewed your petition. You may proceed.

24 MR. DEL SESTO: Thank you, your Honor. As Clerk
25 Miley indicated, we're here on the Receivers 22nd report

1 and 21st interim request for approval of fees, costs, and
2 expenses. Notice of this report and this hearing has
3 been provided to all parties known to the Receiver, all
4 attorneys who have entered their appearance, and all of
5 the pension holders in this case, your Honor. A copy of
6 the report is also posted to the dedicated website that I
7 set up in the beginning of this case for review and
8 download by any party. I received no objection to the
9 report, your Honor. And unless your Honor has some
10 specific questions, I'll kind of just hit the highlights.
11 I know your Honor reviews the petition thoroughly so I
12 don't want to belabor the points that are in writing.

13 THE COURT: Why don't you go ahead with that and
14 then I'll have some questions after.

15 MR. DEL SESTO: Your Honor, we were last before the
16 Court approximately two months ago. We still continue to
17 hold at about \$970,000 a month in terms of benefit
18 payments. Since the last report, your Honor, we had
19 presented, and when I say we, I mean the Liquidating
20 Receiver and I, presented a joint petition to settle a
21 matter with Beacon Insurance, which your Honor entered
22 that order I believe today. I appreciate it. Thank you.
23 So that issue is behind us.

24 With regard to the federal litigation, the remaining
25 Defendants, the Diocesan Defendants, have filed a motion

1 for summary judgment as to certain counts of the
2 complaint, and the Plaintiffs in that case, myself as
3 well as the seven other named Plaintiffs for the class,
4 have until the end of March to respond to that and then
5 the Diocesan Defendants will have a short period of time
6 after that to reply. Then I would imagine that Judge
7 Smith will set that down for hearing, but that's the
8 process right now to schedule it now for briefing in that
9 matter, your Honor.

10 In addition to that, your Honor, there are a few
11 matters. We, actually, Attorneys Wistow and Ledsham on
12 behalf of special counsel recently filed a petition
13 regarding the charitable assets, which I don't believe
14 has been set down for hearing yet, your Honor, but we
15 would be seeking a date for that. Quite frankly, your
16 Honor, there are charitable assets, and I won't get into
17 the details of that petition because there will be
18 another hearing date for that. But one thing that I
19 believe that petition will do is it will advance the
20 issue -- there is an issue in the liquidating
21 receivership regarding a claim that has been filed by the
22 Department of Environmental Management. And if your
23 Honor has had a chance -- I'm not sure if you had a
24 chance to read the petition that was filed.

25 THE COURT: I have not.

1 MR. DEL SESTO: I believe that that petition will
2 probably, if the Department of Environmental Management
3 is going to take a position, it will force the Department
4 to raise that position within that petition. And I am
5 hopeful, and I think special counsel can speak for
6 themselves but I think they will join me in this, we're
7 hopeful that will resolve both the charitable assets
8 issue, bringing those assets into the plan for the
9 benefit of the plan and the participants, but also will,
10 I guess, either smoke out or bring to the forefront the
11 issue with regard to the DEM and possibly resolve that.
12 So kind of a killing-two-birds-with-one-stone issue.

13 Other than that, your Honor, if it does not do that,
14 that DEM issue, obviously, is squarely in the liquidating
15 receivership as a claim that was brought in Attorney
16 Hemmendinger's non-liquidating receivership -- I'm sorry,
17 liquidating receivership. He would be working through
18 that, and per the terms of the settlement agreement that
19 your Honor approved a couple of years ago, he would be
20 cooperating with me in terms of bringing resolution to
21 that.

22 THE COURT: I think at the last hearing on the
23 approval on Beacon I had mentioned that the Court stands
24 ready to do what it needs to do to bring this thing to a
25 head. I don't want to use the word distraction but it's

1 getting in the way of those charitable assets coming
2 over.

3 MR. DEL SESTO: I agree, your Honor, and I
4 appreciate that. On that issue, on the DEM issue, I want
5 to clarify a point which there seems has been a little
6 bit of confusion on it with regard to DEM in terms of
7 what has been presented in the Liquidating Receiver's
8 reports and my reports. I just want to be clear for the
9 Court's purposes that Wistow Sheehan & Lovely, as special
10 counsel to the Receiver, is not involved in the
11 resolution, negotiations, discussions regarding DEM,
12 unless and to the extent that it comes up in the petition
13 regarding the charitable assets. But with regard to DEM
14 itself, specifically, it is Attorney Hemmendinger as the
15 Liquidating Receiver and myself. Wistow Sheehan & Lovely
16 is not involved in that. I just wanted to make sure that
17 was clear because there seemed to be some confusion
18 between the two reports.

19 THE COURT: That's fine.

20 MR. DEL SESTO: Other than that, your Honor, we have
21 approximately \$83 million on hand in the plan. If your
22 Honor remembers back in August of 2017 we started this
23 case with just shy of \$86 million, \$85,795,000, and we
24 have just over \$83 million right now, your Honor.
25 Approximately \$10 million, a little north of \$10 million

1 continues to be held by Schwaab. It is not technically
2 in the plan. It's not being managed by MRSA or
3 accessible by DOA. It came over as part of the
4 settlement with the Legacy Hospitals and it had
5 restrictions in terms of its investment, in terms of when
6 it could be liquidated, more importantly, when it could
7 be transfereed over to Bank of America and MRSA. The
8 deadline or the timeframe for that liquidation to happen
9 without penalty, I am waiting for confirmation from
10 Schwaab but they have tentatively told me it's May of
11 this year, so just in a few months. Obviously, once that
12 timeframe comes, we will not be assessed the substantial
13 penalties that would have been assessed. I will be
14 transferring those funds so that they can be pooled with
15 the \$73 million that Bank of America is holding of those.

16 THE COURT: The downside of proprietary funds.

17 MR. DEL SESTO: That's exactly right. Absent
18 everything I just said, or notwithstanding everything I
19 just said, there is nothing more that I need to report or
20 that I believe needs to be reported unless your Honor has
21 some questions for me. I will say, your Honor, that I
22 neglected, because of the vacation break, I did not get
23 you my invoice for today. I will get that to you. So
24 I'm not asking the Court to approve the fees today
25 because you don't have any in front of you yet to review

1 and approve. But I am asking that the Court approve the
2 report and approve, confirm, and ratify all the acts and
3 doings of the Receiver, and then tentatively schedule a
4 date for the next report approximately sixty days from
5 today.

6 THE COURT: Okay. A question, where do we stand in
7 terms of counsel that we retained down in D.C with
8 respect to pension guarantees? Is there any change with
9 that?

10 MR. DEL SESTO: There is no change, your Honor. I
11 continue, and I believe Wistow Sheehan & Lovely also
12 periodically communicates with Attorney Cohen. It's Jeff
13 Cohen down there, your Honor. I communicate with him
14 regularly. Recently, and by recently I mean within the
15 past month, the PBGC has asked for what I'm going to call
16 their routine request for information. They made the
17 same request every three to six months or so and Attorney
18 Cohen did provide them with the information that they did
19 request for that. Other than that, we have not had any
20 communication from them. And Attorney Cohen, as I have
21 requested him to do, for every filing that occurs both in
22 the federal investigation as well as is this case, we
23 forward that down to the various federal agencies that
24 would be involved in the PBGC issue, I'll call it, so
25 that they have full awareness as to what is happening up

1 here with this case and are aware and can ask questions
2 if they have any. Other than that, the single request or
3 the most recent request, they haven't made them before,
4 other than the most recent request, we haven't had any
5 communication from that agency or any related agencies
6 either.

7 THE COURT: Okay. And just one other question. You
8 said what about \$83,970,000 a month is kind of a burn
9 rate. Do you know where we stand in terms of pensioners
10 at this point? And if you don't have it, it's fine.
11 It's just been a while since I asked the question, if you
12 can just give me a quick update.

13 MR. DEL SESTO: I can get that. That's a difficult
14 -- we have 1,544 currently receiving benefits. The one
15 part of that number that I can't provide the Court, it's
16 very difficult to find, is how many of that 1,544 are
17 actually pensioners versus beneficiaries of a pensioner
18 who has passed receiving death benefits or something.

19 THE COURT: My question, any maybe you've answered
20 it, whether it's beneficiaries or pensioners, it's kind
21 of the check is going out the door. So would you say
22 about \$1,500?

23 MR. DEL SESTO: \$1,544 as of February of this year.

24 THE COURT: Has that substantially increased over
25 the course of the receivership?

1 MR. DEL SESTO: It has not. I can double check on
2 this number, but I believe over the past year it's
3 increased to approximately 100 to 150 participants.

4 THE COURT: Okay.

5 MR. DEL SESTO: As your Honor can recall, in the
6 beginning of this, we kind of had what I would call a
7 little bit of a run.

8 THE COURT: Yes, I remember that.

9 MR. DEL SESTO: Where a lot of people put their
10 applications in but as this case has continued on and I
11 think people have kind of gotten used to what's happening
12 and have seen the numbers and what not, there has been a
13 little less of a panic, which, you know, the longer that
14 people don't apply, there is, obviously, an early
15 eligibility as well as the standard eligibility and there
16 is a significant difference between electing to receive
17 benefits early versus standard and I think the
18 consistency of the reporting and the information has
19 calmed some people down so that they're not as concerned
20 about applying at this point.

21 THE COURT: So the \$83 million does that include the
22 money at Schwaab?

23 MR. DEL SESTO: That's correct, your Honor.

24 THE COURT: And does it include the money in the
25 liquidating receivership estate?

1 MR. DEL SESTO: It does not, and that also does not
2 include the money that I am holding on hand, which, give
3 my one second, your Honor, is \$3.343 million.

4 THE COURT: Very good. There were no objections to
5 the report. Does anyone wish to be heard before the
6 Court rules?

7 MR. WISTOW: The first thing that I would like to do
8 is thank your Honor for entering the order for the Beacon
9 settlement. I understand from general counsel for
10 Beacon, Amy Vitale, that Mr. Del Sesto has, and I have
11 one of them in an IOLTA account, Mr. Del Sesto has spread
12 the rumor that I sent it to my mistress in Buenos Aires.
13 I am happy to get that. The second thing I want to say
14 is the reason we have not moved to push the Cy Pres
15 money, the charitable money, is that Beacon was one of
16 the claimants and now the only claimant left. We
17 resolved that. And that's why we were putting it in now
18 and we're hopeful that that is really going to accelerate
19 this thing.

20 THE COURT: Great.

21 MR. WISTOW: Both our proceeding and the liquidating
22 receivership proceeding.

23 THE COURT: Perfect. Carin is on the line. If we
24 can coordinate, tomorrow is a very busy day, if we can
25 just get that scheduled and coordinate with Steve and Tom

1 and whoever else.

2 THE CLERK: I have one that Ben just sent me.

3 MR. DEL SESTO: Yes. Thank you, Carin.

4 MR. WISTOW: If you could possibly get that to us
5 too because we're going to be arguing.

6 THE COURT: Yes, I'm just talking in terms of one of
7 you to coordinate what day works.

8 MR. HEMMENDINGER: Your Honor, Thomas Hemmendinger
9 here. Just to pick up on something that Mr. Wistow
10 observed about claims and the liquidating receivership.
11 There is technically one other claim, Angell Pension
12 Group, but they signed a release as part of the
13 settlement last year and they haven't been willing to
14 withdraw their claim yet for reasons I don't need to go
15 into unless your Honor is interested.

16 THE COURT: I'm familiar with them so that's fine.

17 MR. DEL SESTO: Their claim is I'll say generously a
18 a rounding error to the Plan Receiver's claim in this
19 case. So if we don't get it resolved before the Court
20 orders any relief on this pending petition about the
21 charitable assets, we can make a very small reserve to
22 cover that contingency and still accommodate the Plan
23 Receiver.

24 MR. WISTOW: Not to complicate this, I would hope
25 that the position that the Liquidating Receiver will take

1 is if it were released, and whether or not to withdraw
2 the claim doesn't make any difference. That we would ask
3 the Court to enforce the release. That's my hope.

4 THE COURT: And I think the big thing is, and
5 hopefully through this petition that's being filed, we'll
6 call the question as far as the DEM issue and I think
7 we're left with a very small issue that whether it has to
8 be brought before the Court or not, we can take care of
9 that.

10 MR. WISTOW: Yes, your Honor.

11 THE COURT: Okay. Very good. Thank you. The Court
12 approves, ratifies, and confirms the acts and doings of
13 the Receiver, Attorney Del Sesto. The Court, as was
14 mentioned, does not have the invoice before the Court.
15 As soon as that is sent in, the Court will conduct its
16 review and will be in touch with Attorney Del Sesto and
17 the other parties in terms of entering the appropriate
18 order. So if that can get over to me tomorrow or so.
19 Tomorrow is, as I call it, National Grid PPL day. So
20 I'll be busy. Certainly, by Thursday I should be able to
21 take a look at it.

22 MR. DEL SESTO: That would be great. Thank you,
23 your Honor.

24 THE COURT: Thank you all very much. Max, if you
25 could just stay on the line for one quick second. We

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will be off the record. Thank you all.

MR. DEL SESTO: Thank you, Judge.

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