

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

REMOTEY ON SEPTEMBER 28, 2021

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....RECEIVER

**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 TUESDAY, SEPTEMBER 28, 2021

2 MORNING SESSION

3 (The following proceeding was conducted remotely:)

4 THE COURT: Why don't we get started. Madam Clerk,
5 if you would call the case.

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

13 MR. DEL SESTO: Good morning, your Honor. Stephen
14 Del Sesto, the Court Appointed Receiver for the St.
15 Joseph's Health Services of Rhode Island Pension Plan.

16 MR. HEMMENDINGER: And, your Honor, Thomas
17 Hemmendinger the Liquidating Receiver for Chartercare
18 Community Board, St. Joseph's Health Services of Rhode
19 Island, and Roger Williams Hospital.

20 THE COURT: Thank you very much. The Receiver may
21 proceed. I have had the opportunity to review the report
22 as well as your request for fees. Please proceed.

23 MR. DEL SESTO: Thank you, your Honor. Actually,
24 as a housekeeping matter on the request for fees, I know
25 it was included in the report, but I was not paying

1 attention to my legal assistant's schedule, so the legal
2 assistant who normally finalizes that invoice and gets it
3 over to -- actually, my paralegal gets it to you but my
4 legal assistant finalizes it, and I'll get it to you as
5 soon as somebody in Portland tells me how to do that and
6 then you can review it at your convenience and let me
7 know if there are questions.

8 THE COURT: You know what, I am pleased that this
9 time it's not something that I have and I'm telling you I
10 know. I feel very bad for your excellent paralegal Julie
11 who has to keep sending me copies of things. Why don't
12 we go forward with the report.

13 MR. DEL SESTO: Thank you, your Honor. So, your
14 Honor, as Clerk Miley had indicated, we are here on the
15 Receiver's twentieth interim report. We just past about
16 a month ago the four-year anniversary of this case, which
17 I know your Honor is very, very familiar with. With
18 regard to the nuts and bolts of what's been going on, as
19 of August of 2021, we had 1,530 participants receiving
20 monthly benefits and those monthly benefits totaled
21 \$967,192. I continue to process requests for access to
22 benefits for pension holders who are reaching the
23 appropriate age thresholds to begin receiving those.
24 Also, the unfortunate part of my job is also to process
25 death benefits and terminations of those for pension

1 holders who are no longer with us.

2 I do continue, your Honor, as I have since the
3 beginning of this case, to hold what I've been calling
4 town hall meetings. Since the start of the pandemic
5 those have moved to a remote platform. We do it via
6 Zoon. But we do it about every 60 days, or more
7 frequently if there are issues that I think need to be
8 brought to their attention.

9 In addition to that, your Honor, as you know, I have
10 set up a dedicated website, which not only puts the
11 pleadings and happenings from this case, but also the
12 federal court case, as well as Attorney Hemmendinger's
13 case so that it's all in one place and if people want to
14 read what's going on, they don't have to either go on to
15 the public portal or bother anybody else for it and that
16 continues to be done.

17 In addition, your Honor, Attorney Jeff Cohen, who is
18 special counsel with regard to the pension issues related
19 to the PBGC, continues to take everything that has been
20 filed in both this case, the federal case, as well as the
21 liquidating receivership, and forward it over to the
22 appropriate federal agencies. We have periodically
23 received requests for updated information from those
24 agencies. The last requested update was in June. We
25 haven't gotten one recently, but because I just mentioned

1 it, we probably will in the next couple of days. And I
2 coordinate that with Attorney Cohen to get that
3 information to them.

4 Since the filing of the nineteenth report -- since
5 the hearing on the nineteenth report rather, I'll just
6 hit the highpoints because I know your Honor has read the
7 report. The most significant thing that has happened
8 since the hearing on the 19th report is the federal
9 court's approval of the settlement, which your Honor also
10 had approved. That approval was done, and, as your Honor
11 knows, the funds from that settlement were held. Both
12 Prospect sides were letters of credit and on Angell's
13 side the funds were deposited in the registry. Your
14 Honor is aware because you signed the order directing the
15 release of the funds from the registry and I made a
16 demand on the letters of credit. All the funds that were
17 held either in the registry or with J.P. Morgan Chase,
18 the letters of credit, had been received by the Plan.

19 Attorney Wistow's fee of twenty-three and a third
20 was also approved by the federal court. That was paid
21 over to his firm with the net proceeds of about \$22
22 million have been transferred over to Bank of America for
23 use in the Plan. I have discussed with Bank of America
24 and MRSA the investments of those funds and I believe
25 that is in process right now. It takes a little bit of

1 time to move it from Bank of America over to MRSA and
2 then to be invested, but it is in the process of doing
3 that. In connection with the federal lawsuit, your
4 Honor, that leaves just the diocesan defendants remaining
5 in that suit. There was a discussion --

6 THE COURT: Counsel, if I could just ask a question.
7 Has the Angell settlement been transferred as well?

8 MR. DEL SESTO: Yes, your Honor. I'm sorry if I
9 wasn't clear on that. All the funds have been
10 transferred, so I did receive from the treasurer's office
11 the check from the registry and I received from J.P.
12 Morgan wires representing the letters of credit. So all
13 funds were received.

14 THE COURT: Thank you.

15 MR. DEL SESTO: And, actually, I'm happy to say with
16 your assistance, your Honor, that was expedited both on
17 the Court's side as well as the treasurer's side to get
18 it done.

19 THE COURT: Great.

20 MR. DEL SESTO: So those efforts are appreciated by
21 everybody who made that happen. After the fairness
22 hearing, your Honor, in federal court with Judge Smith
23 there was a conference and the diocese raised the issue,
24 which they had previously been silent on, that they
25 agreed with the Plan, the Plaintiff's position as to the

1 date that the Plan became an ERISA Plan. Although it
2 would seem strange, our position, the Plaintiff's
3 position was that issue is moot and the diocese can't now
4 adopt it and say that the Court should rule on that
5 motion when one of the parties is no longer there
6 pressing it which in that case was Prospect. Judge Smith
7 asked the parties to go back and provide memorandum on
8 whether or not that issue should be decided. That was
9 done. And after reviewing those and after another
10 conference Judge Smith directed the parties to try to
11 mediate the case once again. As your Honor may recall,
12 we did try to mediate it back in 2019 and those efforts
13 were unsuccessful and Judge Smith asked that that issue
14 be -- that attempt be revisited.

15 So I am reporting, and I believe your Honor is
16 aware, for purposes of the report we begin mediation
17 again tomorrow with the diocese. Former Chief Justice
18 Frank Williams is going to be mediator on that. As you
19 recall, he was the mediator with regard to the Prospect
20 Angell settlement as well, and so I am hopeful that he
21 can make his magic work a second time in this case and
22 I'm sure both you and Judge Smith would help that as well
23 so that we can get a resolution. We'll see what happens.
24 We have it scheduled for Wednesday, Thursday, and Friday.
25 I think if we take all three days that's a good sign, but

1 if I come back to you late afternoon, tomorrow, or
2 Thursday and say we're all done, then that's probably not
3 a good sign. I don't think it's going to happen quickly.

4 Other than that, your Honor, as I indicated at the
5 time that we started on this road in August of 2017 the
6 Plaintiff had assets totalling \$85,795,641. Prior to
7 settlement we had funds of approximately \$65 million, and
8 obviously, with the settlement, your Honor, that placed
9 our asset total for the Plan above \$90 million. So
10 although we have been working on this for four years and
11 we have been eroding the assets of the Plan to pay
12 benefits and other related fees, at least the settlement
13 has put us north of where we were when we started and
14 hopefully that will provide us with additional cushion
15 necessary to get through the diocese issues over in
16 federal court assuming mediation is not successful.

17 Since the last report, your Honor, as of the last
18 report, I am holding cash on hand or I was holding cash
19 on hand in the amount of \$3,416,277. I had receipts in
20 the amount of \$30,001,926. Obviously, \$30 million of
21 that amount was the settlement proceeds with Prospect and
22 Angell. I have disbursements totally \$30,039,419.
23 Again, \$30 million of that went over to a combination of
24 Attorney Wistow's office for his fees as well as to Bank
25 of America for investment and that leaves cash on hand

1 currently or as of the filing of this report, your Honor,
2 in the amount of \$3,378,784.09.

3 Beyond that, your Honor, unless you have any
4 questions, that's really an update. Until we finish the
5 mediation, I won't have anything substantive. I will
6 note we have been working -- as you know, there is a very
7 strong connection between this proceeding and Attorney
8 Hemmendinger's proceeding by virtue of the settlement
9 with the Legacy hospitals, St. Joe's, and Roger Williams.
10 Many of the assets, if not all of the assets, held by
11 Attorney Hemmendinger were either transferred, held in
12 trust, or would be subject to payment on a proof of claim
13 of which at this point in time I believe the Plan is the
14 largest claimant in his receivership.

15 We are working and continue to work with Attorney
16 Hemmendinger cooperatively to collect additional moneys
17 which would go into the Plan, some of which are the
18 property of the plan by virtue of the settlement and some
19 of which would go into Attorney Hemmendinger's
20 receivership for distribution, but I and Attorney
21 Hemmendinger speak quite regularly. He also communicates
22 quite regularly with the office of Wistow, Sheehan &
23 Lovely and we're working cooperatively to get those
24 things done and get that money in as quickly as possible
25 both for the benefit of the plan and also for the benefit

1 of Attorney Hemmendinger's receivership so that those
2 moneys could ultimately be transferred over to the plan
3 to the extent that your Honor approves the claim.

4 THE COURT: And I understand we have another
5 proceeding coming up, which is a report on a liquidating
6 receivership that is not on for today. So with respect
7 to your report, the Court approves, confirms, and
8 ratifies all of the Receiver's acts and doings and
9 disbursements as of this twentieth report. The Court is
10 going to reserve on the nineteenth request for fees until
11 it receives the break down in addition to what the Court
12 has already received. So do you know, Attorney Del
13 Sesto, when the Court will receive the fees, because I'm
14 just thinking whether you should prepare one order so I
15 have the chance to review it or whether you want to do it
16 two steps?

17 MR. DEL SESTO: I am told that she is back from
18 vacation on Thursday. I am also told I can get somebody
19 up in Portland that can do it sooner than that for me.
20 Unfortunately, I don't know the administration of the
21 business office as well as I probably should, so I had to
22 have a few phone calls. But I hope, your Honor, to get
23 it to you within the next two days maximum, so maybe one
24 order would be more efficient depending on what your
25 Honor feels.

1 THE COURT: I think it would. Why don't you just
2 hold off on submitting the order until the end of the
3 week or depending on when it comes in, the very early
4 part of next week so we can just get one order done at
5 that point.

6 MR. DEL SESTO: That would be fine.

7 THE COURT: Is there anything else before we break?

8 MR. DEL SESTO: The only thing, your Honor, as I
9 typically say in the order and I can work with Clerk
10 Miley to get a date is that your Honor set a date within
11 the next sixty days which would put us somewhere at the
12 end of November, beginning of December for a report,
13 which hopefully will have some good news with regard to
14 the diocese at that point in time.

15 THE COURT: Very good. Just off the record for a
16 moment.

17 (Off-the-record discussion.)

18 THE COURT: Thank you very much. The Court is in
19 recess.

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