

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 DECEMBER 9, 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 11, inclusive, are a transcript of a remote hearing done to the best of my ability.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 THURSDAY, DECEMBER 9, 2021

2 MORNING SESSION

3 (The following proceeding was conducted remotely:)

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

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 Rhode Island
9 Retirement Plan. This is on for the Receiver's
10 twenty-first interim report and twentieth 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 Plan Receiver.

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

19 THE COURT: Thank you. The Plan Receiver may
20 proceed.

21 MR. DEL SESTO: Thank you, your Honor. As noted by
22 Clerk Miley at the call of the calendar, this is the Plan
23 Receiver's twenty-first interim report and twentieth
24 request for fees. Notice of this report has been
25 provided to all creditors and interested parties and

1 there is an affidavit of notice to that affect that has
2 been filed with the Court. Your Honor, is pretty much up
3 to date on generally what's going on, and I'm sure your
4 Honor has read the report so I won't repeat things that
5 have already been stated in the report. I'll just hit
6 some of the highlights.

7 One issue, your Honor, is at the time that we
8 started we had approximately 2,729 members of the pension
9 Plan that were vested in either receiving or would be
10 eligible at some point in time to receive benefits. At
11 that time back in August of 2017, 1,229 were receiving
12 benefits. As of December 1st of this year, just about a
13 week ago, there were 1,542 participants receiving
14 benefits. The total amount of benefits paid in December
15 was \$970,995.68 and year to date for calendar year 2021
16 the Plan paid out \$10,753,696 in benefits. So,
17 obviously, your Honor, we're at an erosion point of -- we
18 continue to be at an erosion point, I guess I should say,
19 in the middle of \$10 million, about seven this year.
20 That will, obviously, go up a little bit next year, and
21 it keeps creeping up each year. So that's the erosion,
22 which is only offset by -- generally speaking, it's
23 offset by interest income as well as the settlements that
24 your Honor is aware of and that have been approved thus
25 far.

1 We were last before your Honor approximately two
2 months ago. That was September 28th when I presented by
3 twentieth report. Since then there hasn't been any
4 substantive issues that have been before your Honor in
5 this matter. Your Honor is aware of the federal court
6 litigation. There have been filings in that litigation,
7 the federal court lawsuit regarding summary judgement.
8 Your Honor may recall that myself and the other
9 plaintiffs when Prospect was involved filed a motion for
10 summary judgment relative to some of the issues related
11 to Prospect. The diocese did not take a position at that
12 time on that motion. But after the settlement with
13 Prospect, we sought to withdraw our motion for summary
14 judgment and the diocese asked the Court to actually rule
15 on it. As a result of that disagreement, the Court had
16 asked for briefing and that briefing has progressed.
17 There have been a couple of conferences and I believe
18 there has been no hearing set on those papers yet. So
19 that litigation continues to proceed.

20 Your Honor also, I believe, is aware that we did at
21 the end of September, beginning of October, we did have a
22 few days scheduled for mediation with the diocese.
23 Retired Judge Frank Williams was the mediator in that
24 matter. After one day of mediation it was agreed upon by
25 the parties and at the suggestion of the mediator that

1 for the time being mediation cease, that no substantive
2 progress had been made on that first day and Judge
3 Williams did not think that the time was right to
4 continue, that no further progress would be made. I am
5 hopeful that we will resume mediation efforts, but it
6 won't be at least until Judge Smith has ruled on that
7 issue relative to the summary judgment. Attorney
8 Hemmendinger is at this hearing, your Honor, and his
9 liquidating receivership is progressing. I understand
10 that he has also submitted an interim report. So in the
11 time between me filing and this hearing has filed his
12 report. I will not go into the details of his --

13 THE COURT: That's on for the latter part of next
14 week.

15 MR. DEL SESTO: That's correct. If you recall, your
16 Honor, the other important issue to discuss is if you
17 recall at the time that we started this case back in
18 August of 2017 we had approximately \$85,800,000 in the
19 Plan to pay out benefits. As of October 31st of this
20 year the Plan assets total approximately \$85,500 -- I'm
21 sorry, \$85,500,000. That's a much different number. I
22 apologize. The first number would give extreme panic.
23 The second number is much, much better, \$85,465,000.
24 Just so your Honor knows, and the report indicates,
25 \$75,465,000 of that is held by Bank of America and it's

1 by MRSA Investments. The remaining \$10 million and
2 change is actually held at Schwaab. Those are moneys
3 that were held by Schwaab by the Legacy hospitals and
4 then they were transferred to the Receiver when the
5 settlement was finalized with the Legacy hospitals. I
6 have left that money at Schwaab because it is in
7 restricted investments, which I believe mature -- I'll
8 confirm the exact month, but I believe mature in May/June
9 of this year. If I had withdrawn those funds, moved them
10 anywhere, there would be a substantial penalty related to
11 that so I left them there. They continue to perform
12 under Schwaab but there is not a whole lot of activity
13 with those because of their restrictive nature, but it is
14 about ten and a half million dollars that is held with
15 Schwaab. Once we get to the maturity where we will not
16 incur those penalties for liquidating those investments,
17 then I will remove them from Schwaab and put them with
18 Bank of America as well.

19 One issue that has not yet been formally brought
20 before your Honor, but I plan on filing a petition to be
21 heard some time in January based on your Honor's
22 availability, I will be filing a request to fire, I guess
23 for all intents and purposes, MRSA and bring on a new
24 investment manager. I just wanted to give your Honor the
25 heads up on that. It's not due to any inappropriate

1 activity by MRSA at this time. It's just I feel it's a
2 more prudent direction to go in light of some
3 circumstances. Quite frankly, MRSA was involved at the
4 beginning of this case, and, although, they have done a
5 good job managing the assets, I believe we could be
6 better served with a different investment manager.

7 THE COURT: We can take that up in January.

8 MR. DEL SESTO: Okay. Beyond that, your Honor,
9 unless you have any questions, in addition to the money
10 that is being held by Bank of America and Schwaab, I am
11 holding the sum of \$3,364,728. That is set forth on the
12 schedule of receipts and disbursements. That money has
13 been used for out-of-pocket expenses that would
14 ordinarily not be permitted to be paid by the Plan. So
15 that was a portion of one of the settlements. I believe
16 it was the CC, the CharterCare Community Board Foundation
17 or CharterCare Foundation settlement is where those funds
18 came from, and it has been held aside for that reason to
19 pay out-of-pocket expenses that were otherwise not
20 available to be paid by the Plan.

21 I continue to engage Attorney Jeff Cohen, who is our
22 resident pension and PBGC expert. We have continued to
23 communicate with the PBGC, and that communication has
24 consisted of most recently just providing them with
25 copies of everything and anything that's filed in this

1 matter or the related matter. That includes Attorney
2 Hemmendinger's liquidating receivership as well as the
3 federal litigation. There have been no substantive
4 conversations with PBGC. They do typically, at least
5 once every a year, sometimes twice, ask us to provide
6 additional documentation. They have not made that
7 request in about six or seven months so there may be one
8 coming, but as of right now we have not heard from them.

9 Beyond that, unless your Honor has any questions,
10 that concludes my report. I'd ask the Court to approve
11 the report and confirm, ratify, and approve all my acts
12 and doings from the date of the report, and I will stop
13 speaking so your Honor can ask questions.

14 THE COURT: In terms of claims of the Plan
15 receivership, it sounds like what we're kind of funneled
16 down to at this point is the claims against the diocese
17 that are in federal court?

18 MR. DEL SESTO: That's correct, your Honor. There
19 are actually two, I guess I'll call them, sources of
20 potential recovery left for this Plan. There is the
21 litigation with the diocese, which I think goes to
22 settlements. There should be a recovery for the Plan
23 that goes to litigation. I expect there would also be
24 recovery for the Plan, but I think the diocese feels
25 differently about that. We have what I will call the

1 most substantial claim in Attorney Hemmendinger's
2 liquidating receivership. I, as well as special counsel,
3 Wistow, Sheehan & Lovely, have been working with Attorney
4 Hemmendinger to resolve other claim issues that are
5 before him, which if those claim issues are resolved,
6 subject to Attorney Hemmendinger's correction, that will
7 leave this Plan as the sole creditor of his receivership,
8 which would receive all of the funds, less court-approved
9 administrative fees, costs, and expenses that would come
10 in.

11 As of right now, again subject to Attorney
12 Hemmendinger's correction, I believe the number he is
13 holding is somewhere in the vicinity of a million, a
14 million two, but there may be more funds that come into
15 his estate. Right now we are the largest creditor of his
16 estate.

17 I understand that DEM has, I guess, an
18 unsubstantiated claim of \$50 million, but we're the
19 largest creditor in his estate and if we resolve the
20 issues with the Department of Labor and Training and DEM,
21 that would leave us as the only claimant in the estate.
22 And those would be the only two areas of recovery, your
23 Honor, that would be left. After that it would really be
24 left to -- or the fate of the Plan would be left to our
25 ability to negotiate something with PBGC.

1 THE COURT: It sounds like the Plan Receiver is
2 still involved in a lot of things including the federal
3 court litigation and there's some issues. But, you know,
4 other than those, you're kind of in a holding pattern,
5 right? My concern is I think this has been phenomenal in
6 terms of keeping the payments going, but we just don't
7 know how long it's going to be in federal court to even
8 get this motion on. And depending on the outcome, it's
9 only going to lead to another set of motions if the judge
10 allows you to withdraw your summary judgment motion.

11 MR. DEL SESTO: I'm sure it will, your Honor.

12 THE COURT: Attorney Hemmendinger, I know your
13 report is on, I believe, for the 16th. Is there
14 anything that the Plan Receiver talked about that you
15 wish to either clarify or be heard on?

16 MR. HEMMENDINGER: Just a couple of things to
17 clarify, your Honor.

18 THE COURT: Sure.

19 MR. HEMMENDINGER: I agree with the Plan Receiver's
20 description of everything that relates to the liquidating
21 receivership. I do have, as of the end of September cash
22 on hand and some more cash has come in since then,
23 obviously, with only relatively nominal expenses since
24 the end of September. There is one other claim out there
25 in my receivership filed by Angell Pension Group, which

1 is one of the partners with whom we settled already.
2 Although it's out there, it's \$675,000, I believe,
3 ultimately that claim will go away. We just have to get
4 rid of it. It's covered by the release in the settlement
5 and Angell has just for technical reasons declined to
6 withdraw the claim. They're saying that because it's
7 possible for Prospect to go into insolvency proceedings
8 still, physically possible for that to happen, and that a
9 trustee or debtor in possession might try to avoid
10 Prospect's payments under that settlement, that they need
11 to preserve the claim. And Mr. Del Sesto, Mr. Wistow,
12 and I have talked about several different approaches to
13 eliminating that claim. We just haven't seen a need to
14 do it yet because we've got have bigger claims to resolve
15 right now. That's all.

16 THE COURT: Okay. Very good. The Court has
17 reviewed the twenty-first interim report of Attorney Del
18 Sesto, the fiduciary in this case. The Court ratifies
19 the acts, doings, and disbursements of Attorney Del
20 Sesto. The Court also has reviewed the fees, costs, and
21 expenses, finds those fair, reasonable, and for the
22 benefit of the receivership estate. I know there were
23 several requests in the twenty-first report. Those are
24 granted. I would ask Attorney Del Sesto if you could
25 submit the appropriate order to the Court.

1 MR. DEL SESTO: I will do that, your Honor.

2 THE COURT: Attorney Del Sesto, just off the record,
3 I have a couple of questions on some of this, if you
4 don't mind just staying on the line.

5 MR. DEL SESTO: Absolutely.

6 THE COURT: Thank you all very much. Have a good
7 day.

8 MR. DEL SESTO: Thank you, your Honor.

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

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