

Hearing date: March 22, 2022 at 3:00 p.m. by WebEx

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re:

CharterCARE Community Board; St. Joseph
Health Services of Rhode Island; and Roger
Williams Hospital

C.A. No. PC-2019-11756

**LIQUIDATING RECEIVER'S RESPONSE TO
PLAN RECEIVER'S PETITION TO APPLY TRUST INCOME TO PENSION PLAN**

Thomas S. Hemmendinger (the "Liquidating Receiver"), the permanent liquidating receiver of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (each also, individually, a "Legacy Hospital Entity" and, collectively, the "Legacy Hospital Entities"), responds as follows to the Petition to Apply Trust Income to Pension Plan (the "Petition") by Stephen P. Del Sesto (the "Plan Receiver") as receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"):

Introduction

1. CCCB is the parent of SJHSRI and RWH. Until June 20, 2014, SJHSRI owned and operated Our Lady of Fatima Hospital in North Providence, Rhode Island, and RWH owned and operated Roger Williams Medical Center in Providence, Rhode Island.

2. On June 20, 2014, the Legacy Hospital Entities closed on a transaction involving the sale of these hospitals to subsidiaries of Prospect CharterCARE, LLC. The details of this transaction are set forth in detail in the Liquidating Receiver's Fourth Report to this Court.

3. The Petition seeks to apply the distributions from certain charitable trusts (the "Charitable Trusts") to the Plan. A number of the Charitable Trusts are decades old, and the

Legacy Hospital Entity beneficiaries are sometimes identified by their prior entity name. For the convenience of the Court and parties in interest, the following is a summary of the corporate history of each beneficiary.

(a) *RWH*. This entity was formed as a nonprofit corporation by the 1914 consolidation of Rhode Island Homeopathic Hospital (incorporated in 1878) and Homeopathic Hospital of Rhode Island (incorporated in 1904). In 1947, the entity changed its name to “Roger Williams Hospital.”

(b) *SJHSRI*. In 1892, the Rhode Island General Assembly created St. Joseph’s Hospital by legislative charter. In 1970, Our Lady of Fatima Hospital, another nonprofit organization, was merged into St. Joseph’s Hospital, and St. Joseph’s Hospital was the surviving entity. In 1978, St. Joseph’s Hospital changed its name to St. Joseph Hospital. In 1995, St. Joseph Hospital changed its name to St. Joseph Health Services of Rhode Island.

RWH Charitable Trusts

4. RWH is an income beneficiary of the following Charitable Trusts:

(a) Sarah Brown Fund.

(1) The trustee is Bank of America. This trust was established by the will of Sarah S. Brown dated June 21, 1911, as modified by the Final Judgment in Rhode Island Hospital Trust National Bank, successor trustee v. Rhode Island Hospital et al., C.A. No 72-1300 (Providence County Superior Court) and by the 2019 Cy Pres Final Judgment.

(2) RWH receives half of the net income “for the use of said corporation[] in carrying on the work for which [it was] created and organized.”

(3) As of December 31, 2021, the total value of the entire trust endowment was about \$2.56 million, of which half represents the share from which RWH derives income. The Liquidating Receiver anticipates about \$44,000 in distributions to RWH this year, based on the trust’s spending rule.¹

¹ The spending rule for all of the Charitable Trusts is 3.5% of market value as of last day of previous year.

(b) George L. Flint Fund.

(1) The trustee is Bank of America. The document establishing this trust is the Will of George Luther Flint dated April 21, 1936.

(2) RWH (formerly Homeopathic Hospital) receives one-half the net income “for the general uses and purposes of said Hospital.”

(3) As of December 31, 2021, the total value of the entire trust endowment was about \$1.36 million, of which half represents the share from which RWH derives income. The Liquidating Receiver anticipates about \$23,700 in distributions to RWH this year, based on the trust’s spending rule.

(c) Harry M., Miriam C., and William C. Horton Trust.

(1) The trustee is Bank of America. The documents establishing this trust are: a Memorandum of Understanding Regarding the Administration of the Miriam C. Horton Trust, dated June 2004; appointments of delegates to committee dated June 2004; the Miriam C. Horton Trust dated August 9, 1948 (as amended to June 12, 1963) (article fifth); and related correspondence.

(2) The net income is divided as follows: first, up to \$5,000 per year to maintain a memorial room for the settlor’s late husband Harry M. Horton;² and, second, in three equal shares to RWH, Brown University, and such others as designated by a committee made up of delegates from Brown University, Fleet National Bank (now Bank of America), and Rhode Island Hospital.

(3) As of December 31, 2021, the total value of the trust endowment was about \$9.61 million. The Liquidating Receiver anticipates about \$110,000 in distributions to RWH this year, based on the trust’s spending rule.

(d) C. Prescott Knight Fund.

(1) The trustee is Bank of America. The document establishing this trust is the Will of C. Prescott Knight dated November 14, 1932.

² According to the periodic statements from the trustee since the Liquidating Receiver’s appointment, the trustee has not paid anything on account of this memorial room. Under the April 20, 2015 Cy Pres Order, the CharterCARE Health Partners Foundation (an entity unrelated to the liquidating receivership) took over the duty to fund the memorial room. See 2015 Cy Pres Order ¶ 2; and 2015 Cy Pres Petition ¶21 and Exhibit F.

(2) RWH (formerly Homeopathic Hospital of Rhode Island) is the sole income beneficiary of this trust. The trust document specifies that the income must “be used by [RWH] for the general charitable purposes of said corporation.”

(3) The Liquidating Receiver anticipates about \$15,700 in distributions to RWH this year based on the distribution for the first quarter of this year.³

(e) Albert M. Steinert Fund.

(1) The trustee is Bank of America. The document establishing this trust is the Will of Albert M. Steinert dated July 11, 1927.

(2) RWH (formerly Homeopathic Hospital of Rhode Island) receives one-sixth of the net income from this trust. The trust document does not state any purpose for the fund or any restrictions on the use of distributions.

(3) As of December 31, 2021, the total value of the entire trust endowment was about \$360,000. The Liquidating Receiver anticipates about \$21,000 in distributions to RWH this year, based on the trust’s spending rule.

5. Also, RWH is the trustee of about \$160,000, representing the unexpended balance of the “Dedicated Funds” described in paragraph 25(B) of the 2015 Cy Pres Petition. The Dedicated Funds are one of the Charitable Trusts. The 2015 Cy Pres Order granted RWH cy pres approval to use the Dedicated Funds:

to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at [Roger Williams Medical Center] to the extent that RWH [i.e., the Legacy Hospital Entity] is satisfied that such expenditures provide a community benefit.

(2015 Cy Pres Order, paragraph 4.) The 2019 Cy Pres Final Judgment did not modify this

³ The Liquidating Receiver has asked the trustee for the 2021 year-end statement on this trust. The value of this trust as of December 31, 2020 was about \$416,000.

provision of the 2015 Cy Pres Order.

SJHSRI Charitable Trusts

6. SJHSRI is an income beneficiary or remainder beneficiary of the following Charitable Trusts:

(a) Albert M. Steinert Fund (income beneficiary).

(1) The trustee is Bank of America. The document establishing this trust is the Will of Albert M. Steinert dated July 11, 1927.

(2) SJHSRI (formerly St. Joseph’s Hospital) receives one-sixth of the net income from this trust. The trust document does not state any purpose for the fund or any restrictions on the use of distributions.

(3) As of December 31, 2021, the total value of the entire trust endowment was about \$360,000. The Liquidating Receiver anticipates about \$21,000 in distributions to SJHSRI this year, based on the trust’s spending rule.

(b) Harold A. Sweetland Fund (remainder beneficiary).

(1) The trustee is Bank of America. The document establishing this trust is the Will of Harold A. Sweetland dated September 5, 1967.

(2) The net income is to be paid to certain named individuals, and after their deaths SJHSRI (formerly St. Joseph’s Hospital) is to receive one-third of the net income. Bank of America has confirmed to the Liquidating Receiver that only one individual life beneficiary is still alive. Therefore, SJHSRI has not yet received any distribution from this trust. However, once SJHSRI does receive its one-third share of the trust endowment, the trust document provides that the distribution shall be:

absolutely, and in fee simple, . . . for their respective general uses and purposes, except that . . . said St. Joseph’s Hospital shall set aside . . . such amount as shall be required for the establishment and maintenance of a free bed in memory of my late wife, Winifred I. Sweetland, and me.

(3) As of December 31, 2021, the total value of the entire trust endowment was about

\$1.15 million.

(c) Combined Townsend Fund (income beneficiary).

(1) The trustee is Bank of America. The documents establishing this trust are: Deed of Trust by Herbert G. Townsend to Union Trust Company dated January 2, 1929; Modification of Deed of Trust by Herbert G. Townsend to Union Trust Company dated August 27, 1931; Deed of Trust by Marie Ann Townsend dated June 23, 1936; Amendment of Deed of Trust by Herbert G. Townsend to Union Trust Company dated June 30, 1938; Consolidating Amendment of Deed of Trust from Marie Ann Townsend to Union Trust Company dated June 14, 1949; and Amendment of Deed of Trust of Marie Ann Townsend dated September 23, 1955.⁴

(2) Subject to a reinvestment requirement,⁵ SJHSRI (formerly St. Joseph's Hospital) receives one-third of the net income from this trust "for the support of the charitable work carried on by said corporation[]."

(3) As of December 31, 2021, the total value of the trust endowment was about \$25.58 million. The Liquidating Receiver anticipates about \$298,000 in distributions to SJHSRI this year, based on the trust's spending rule.

Evaluation of the Charitable Trusts

7. The Legacy Hospital Entities' interests in the Charitable Trusts are subject to the restrictions set forth in the following (in descending order of precedence):

(a) The restrictions imposed by the December 3, 2019 final judgment in the 2015 Cy Pres Action⁶ (the "2019 Cy Pres Final Judgment").

(b) The restrictions imposed by the 2015 Cy Pres Order.

(c) The restrictions set forth in the documents creating the Charitable Trusts.

⁴ This is a combined fund created by the merger of the funds created by Marie Ann Townsend and by Herbert G. Townsend. Each trust document gave the trustee the power to merge the two funds when both Townsends had died.

⁵ Under the Marie Ann Townsend trust as amended, 5% of net income is reinvested, and 95% is distributed. However, Bank of America states that the annual distribution is based on the 3.5% spending rule noted above.

⁶ Certain capitalized terms used in this report are defined in the Petition.

8. All of these restrictions were in place as of the commencement of this liquidating receivership and the appointment of the Liquidating Receiver. Therefore, the Liquidating Receiver succeeded to the Legacy Hospital Entities' interests subject to these restrictions.

9. Under the 2019 Cy Pres Final Judgment, distributions from the Charitable Trust must be used only to pay Outstanding Pre and Post Closing Liabilities (as the term is used in the Petition). Such liabilities include the cost to wind up the affairs of the Legacy Hospital Entities (including winding-up expenses as contemplated in 2015 and the fees, costs and expenses of this liquidating receivership) and the Legacy Hospital Entities' obligations to the Plan. However, they do not include any other claims in this liquidating receivership.⁷

10. Based on the foregoing, the Liquidating Receiver has concluded that each Charitable Trust represents a restricted asset of the applicable Legacy Hospital Entity, that the interests of each Legacy Hospital Entity therein must be applied to the Plan (subject to the priorities set forth in the next paragraph), and that, other than the Plan Receiver and administrative-priority claimants in this liquidating receivership, creditors of the Legacy Hospital Entities are not entitled to a distribution from such asset in this receivership.

11. The restrictions on the Charitable Trusts collectively require the application of the Legacy Hospital Entities' interests in the Charitable Trusts in the following order of priority:

⁷ Aside from the Plan Receiver's proof of claim, the only open proofs of claim in this receivership are RIDEM, the Truk-Away PRP Group, and Angel Pension Group. The Liquidating Receiver disputes the RIDEM and Truk-Away PRP Group claims on a number of grounds, and the Angell claim was released as part of the Court-approved settlement with the Prospect Medical Holdings entities.

(a) Dedicated Funds:

(1) First, to the enhancement of surgical oncology training and education on the terms and conditions of the 2015 Cy Pres Order and the 2019 Cy Pres Final Judgment.

(2) Second, to any Court-approved fees and expenses of the Liquidating Receiver related to the Dedicated Funds.

(3) Third, to the Plan.

(b) Harold A. Sweetland Fund.

(1) First, on SJHSRI's receipt of the its share of the remainder, "such amount as shall be required for the establishment and maintenance of a free bed in memory of" Winifred I. Sweetland, and Harold A. Sweetland at Our Lady of Fatima Hospital.⁸

(2) Second, to any Court-approved fees and expenses of the Liquidating Receiver related to obtaining SJHSRI's share of the Harold A. Sweetland Fund for the benefit of the Plan.

(3) Third, to the Plan.

(c) All other Charitable Trusts.

(1) First, to a reserve for an equitable portion of the administrative expenses of this liquidating receivership, including such compensation and expenses of the Liquidating Receiver and his counsel as this Court may approve from time to time (all of the foregoing, collectively, the "Administrative Expenses").

(2) Second, to the Plan.

12. The Liquidating Receiver believes that the Administrative Expenses should be equitably allocated between restricted and unrestricted receivership property. The Liquidating Receiver asks this Court to authorize the Plan Receiver and the Liquidating Receiver to agree on

⁸ The Liquidating Receiver submits that such amount can be nominal. At the time this Court entered the 2015 Cy Pres Order, each free bed fund at the Legacy Hospital Entities was only between \$4,000 and \$10,000. In any event, a substantial part of the free care provided at area hospitals, including Our Lady of Fatima, is funded by Medicaid.

such allocation.

13. The Liquidating Receiver also asks this Court to authorize the Liquidating Receiver to retain a reserve for ongoing Administrative Expenses based on such an allocation. The Liquidating Receiver asks this Court to authorize the Plan Receiver and the Liquidating Receiver to agree on such reserve.

Notice to Parties in Interest

14. The Liquidating Receiver has served this Response to (a) counsel of record in this receivership, including the Rhode Island Attorney General, (b) counsel of record for all remaining parties in the Pension Litigation, (c) Bank of America, and (d) the parties who have filed proofs of claim that remain open.

15. The Liquidating Receiver believes that this constitutes sufficient notice of this Response.

WHEREFORE, the Liquidating Receiver prays that this Court:

(a) Find and conclude that the Legacy Hospital Entities' interests in the Charitable Trusts constitute restricted funds which may be used only for application to the Plan, and order the application of the Charitable Trusts to the Plan, subject to the priorities, allocations, and reserves referred to above.

(b) Find and conclude that any recovery in this receivership by any claimants other than the Plan Receiver is limited to cash collected by the Liquidating Receiver from sources other than the Charitable Trusts, subject to the priorities, allocations, and reserves referred to above.

(c) Authorize the Plan Receiver and the Liquidating Receiver to agree on such allocations and reserves.

(d) Award to the Liquidating Receiver such other and further relief as this Court deems appropriate.

Respectfully submitted,

Date: March 17, 2022

/s/ Thomas S. Hemmendinger
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CERTIFICATE OF SERVICE

I hereby certify as follows:

- 1) On March 17, 2022, I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.
- 2) The following parties received electronic notice: any parties entered to be notified through the Electronic Filing System.
- 3) The document was served by United States Postal Service, postage prepaid, on the following persons: N/A.
- 4) The document was served by email on the persons listed in Exhibit A hereto.

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger

Exhibit A

Andre Digou	Scott Bielecki
Andrew Dennington	Stacey Nakasian
Arlene Violet	Stephen Del Sesto
Benjamin Ledsham	Stephen Sheehan
Chris Callaci	Steven Boyajian
Christine Dieter	Susan Forcier
Christopher Fragomeni	Thomas Reichert
Christopher Lee	Vincent Indeglia
Christopher Sweeney	William M. Dolan III
Christopher Wildenhain	
Daniel Sullivan	
David Godofsky	
David Wollin	
Dean Wagner	
Deming Sherman	
Ekwan Rhow	
Elizabeth Wiens	
Emily Seymour Costin	
Eugene Bernardo	
Giovanni La Terra Bellina	
Emma M. Greene, Bank of America	
Howard Merten	
Jaclyn Cotter	
Jeffrey Kasle	
Jessica Rider	
John McGowan Jr.	
Joseph Cavanagh III	
Joseph Cavanagh Jr.	
Julie Zaccagnini	
Mark Freel	
Mark Russo	
Max Wistow	
Michael Donegan	
Patricia Antonelli	
Patricia Rocha	
Paul Kessimian	
Preston Halperin	
Rebecca Dalpe	
Richard Land	
Robert Fine	
Russell Conn	
Ryan Lutrario	