## WEBEX HEARING DATE: THURSDAY, SEPTEMBER 26, 2024 AT 3:00 PM PROVIDENCE COUNTY BUSINESS CALENDAR BEFORE JUDGE STERN

## STATE OF RHODE ISLAND PROVIDENCE, SC.

**SUPERIOR COURT** 

St. Joseph Health Services of Rhode Island, Inc.

Petitioner

PC-2017-3856

VS.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended *Respondent* 

Bank of America, in its capacity as Trustee of Respondent

Nominal Respondent

## RECEIVER'S THIRTY-SECOND INTERIM REPORT AND THIRTY-FIRST INTERIM REQUEST FOR APPROVAL OF FEES, COSTS AND EXPENSES

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Receiver (the "Receiver") for St. Josephs Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby submits this Thirty-Second Interim Report (the "Thirty-Second Report") and Thirty-First Interim Request for Approval of Fees, Costs and Expenses (the "Thirty-First Fee Application"). In support of the Thirty-Second Report and Thirty-First Fee Application the Receiver states as follows:

1. This case was commenced on August 17, 2017, upon the Petition for the Appointment of a Receiver (the "Petition") filed by St. Joseph Health Services of Rhode Island, Inc. ("Petitioner"). As a result of that Petition, on August 18, 2017, this Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan under surety bond ordered by this Court in the amount of One Million and 00/100 (\$1,000,000.00) Dollars (the "Temporary Receiver Order").

- 2. The Plan was a defined benefit plan organized by Petitioner on or about July 1, 1965, for the benefit of Petitioner's employees. As of the date of the Petition, the Plan had approximately 2,729 vested participants<sup>1</sup> of which approximately 1,229 were then receiving monthly benefits payments. Based on the benefits payments issued by Bank of America as of September 1, 2024, 1,559 participants received monthly benefits payments. The total amount of benefits paid in September 2024 equals \$944,756.42.
- 3. Typically, a hearing on permanent receiver is set for a date approximately twenty (20) days after the appointment of temporary receiver. Here however, the Petitioner requested that the Court set a hearing date no sooner than thirty (30) days to afford the Temporary Receiver time to consider the Petitioner's suggested 40% uniform benefit reduction. Based on that request, the Court docketed the hearing on permanent receiver for October 11, 2017.
- 4. Immediately upon appointment, in order to provide pension holders with a direct means to obtain answers to questions and access to information, the Receiver established a dedicated email address (stjosephretirementplan@pierceatwood.com) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated, public website (https://www.pierceatwood.com/st-joseph-health-services-rhode-island-retirement-plan) where all pleadings and other information would be posted for easy accessibility to pension holders and other interested parties. Notice of the dedicated email, phone lines and website were sent to all Plan participants via first class mail. The Receiver believes that establishing these various means of communication has been invaluable to the pension holders and the Receiver. Since establishing the email address and phone lines the Receiver has received hundreds of email and voicemail communications from pension holders. The dedicated website has been revised and is updated regularly to include access to filings made in both the State and Federal litigation matters as well as other related litigation and liquidating receivership matters related to this proceeding, including, without limitation, the Liquidating Receivership (PC-2019-11756).

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<sup>&</sup>lt;sup>1</sup> According to documents reviewed by the Receiver, excluding United Nurses and Allied Professionals Local 5110 ("UNAP") members hired before October 1, 2008, the Plan was closed to all employees on or about October 1, 2007. Thereafter, benefit accruals were frozen for non-union employees on September 30, 2009, for Federation of Nurses and Health Professionals and other non UNAP union employees on September 30, 2011 and for UNAP employees on June 19, 2014.

- 5. Due to their day-to-day involvement with the Plan, the Receiver initially had consistent and regular communications with Bank of America ("BoA") (the Plan's Trustee and custodian of the assets) and Angell Pension Group (the Plan's actuary and benefits administrator at the time) regarding the management and administration of the Plan. The Receiver has reviewed quarterly reports and had regular, periodic discussions with Mercer Investment ("Mercer") (the Plan's discretionary Investment Manager) regarding the performance of asset investments, the allocation of the asset investments and market conditions and projections that may impact those investments. The Receiver is aware that, among the pension holders and other interested parties, there existed a level of distrust and concern regarding the pre-receivership administration and oversight of the Plan. As a result, the Receiver made changes regarding the day-to-day management and administration of the Plan and its assets and will continue to evaluate and make changes as may be prudent or necessary.
- 6. In the Order Appointing Permanent Receiver (the "Permanent Receiver Order") entered on October 27, 2017, this honorable Court established the Receiver's duties with respect to the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"). The Order generally authorizes the Receiver to monitor, manage and administer the Plan and its assets on behalf of its participants and beneficiaries. Among other actions, the Receiver may engage actuaries, investment advisors, benefit administrators and other professionals to perform various administrative tasks and services for the Plan. The Receiver may also initiate and litigate claims against third parties on the Plan's behalf, acquire and dispose of property, direct investments and pay Plan-related expenses from the assets held in trust.
- 7. The Receiver continues to receive and review documents related to the Plan and its history. The Receiver, Gabriel, Roeder, Smith & Company ("GRS") (the Receiver's Plan actuary) and BoA (the Plan's Trustee and benefits administrator), are fully engaged and in regular communication regarding benefits administration of the Plan and address multiple inquiries, applications, and questions on a daily basis.
- 8. Every 4-8 weeks throughout this proceeding the Receiver has hosted "town-hall" style, informational meetings with the pension holders to provide updates and respond to questions and concerns. In addition and in an effort to assure complete transparency of the receivership process

and the Receiver's efforts, the Receiver takes and, to the extent appropriate, responds to questions raised by the meeting participants regarding various aspects of the receivership, the federal litigation and the Plan. Understanding that not all participants can attend these meetings, the Receiver digitally records each meeting and a link to the meeting recordings is posted to the Receiver's dedicated website and available for unrestricted viewing. The most recent meeting was held on August 13, 2024, and the next meeting will be scheduled for October/early November 2024.

- 9. Prior to this Thirty-Second Report and Thirty-First Request for Approval of Fees, the Receiver has filed thirty-one (31) prior reports with the Court and thirty (30) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Thirty-First Report and related Orders are on file with the Clerk of the Court and accessible on the Receiver's dedicated website and all are incorporated by reference and made a part of this Thirty-Second Interim Report as if fully set forth herein.
- 10. On or about June 28, 2018, as part of the Fourth Report, the Receiver advised the Court that litigation had been initiated in both State Court (Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (PC-2018-4386)) (the "State Litigation") and Federal Court (Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (1:18-cv-00328-WES-LDA)) (the "Federal Litigation" together with the State Litigation shall be referred to as the "Litigation") against various defendants and Special

Counsel provided the Court with a status update of those actions and related next steps for the Litigation.

- 11. Since the filing of the Receiver's Thirty-First Interim Report and Thirtieth Interim Request for Approval of Fees, Costs and Expenses in this Superior Court Receivership action the following has occurred:
  - a. On or about June 25, 2024, this Court held a hearing via Webex on the Thirty-First Report of the Receiver. Upon conclusion of the hearing, the Court approved the Thirty-First Report and the Thirtieth Fee Request and the entry of the Order is pending.
- 12. Since the filing of and hearing on the Thirty-First Report, no new events have occurred and no new filings made in the Federal Litigation (CA No.: 1:18-CV-00328-S-LDA).
- 13. Since the filing of and hearing on the Thirty-First Report, no new events have occurred and no new filings made in the Liquidating Receivership (PC-2019-11756) action.
- 14. As previously reported to this Court, under the Receiver's Settlement with the legacy hospitals, (all for the ultimate benefit of the Plan and its participants) the Receiver was assigned the rights to a \$750,000 escrow fund held by RI Department of Labor and Training. This escrow serves as security for potential self-insured obligations of legacy Roger Williams Hospital ("RWH"). Your Receiver continues to have this escrow released for the benefit of the Plan; however, due to the anticipated involvement of the Pension Benefit Guaranty Corporation ("PBGC") the Receiver will consult with the PBGC regarding the handling or collection of those funds.
- 15. Regarding discussions with the PBGC and the Internal Revenue Service ("IRS") relative to the availability of PBGC coverage for the Plan, the Receiver continues to have regular communications with both of those Federal agencies and provide them with any and all documentation that they have requested. Although, to date, the PBGC has been non-committal regarding the availability of coverage for the Plan, the communications and discussions have

continued and remain positive. The Receiver expects those discussions to continue and become more substantive over the coming months and is hopeful the discussions remain positive and progress forward and ultimately result in full statutory coverage for the Plan. These discussions have always been but have become even more critical due to the fact that PBGC coverage at the full statutory amount for each pension holder are 2 of the express conditions of the Settlement Agreement reached in the Federal Litigation.

16. However, before the PBGC would begin its process which would result in it providing any formal and substantive response on the availability of coverage for the Plan, it required the Plan to seek a determination from the IRS as to whether the Plan is a qualified Plan eligible for PBGC coverage. This IRS determination was also one of the several conditions to be satisfied in connection with the settlement with the Diocesan Defendants.

As previously reported, on or about November 2, 2023, the Receiver filed Form 5300 "Application for Determination for Employee Benefit Plan" with the IRS and received confirmation from the agency that the Form 5300 had been properly filed and received. During the months of May and June 2024, the Receiver and Washington D.C. Special Counsel communicated regularly with the IRS regarding additional information requested by the IRS in connection with its review of the Plan's pending Application for Determination Letter. Documents were compiled and written responses were prepared and submitted to the agency. Ultimately, the IRS issued a favorable Determination Letter on July 1, 2024, and a copy of that Determination Letter was provided to the PBGC in order to begin its process. Additional financial information and Plan documents were requested in July and August 2024 which were also compiled and submitted in late August. No time frame for the PBGC's final coverage determination has been formally provided; however, discussions with the PBGC continue regularly and the agency has indicated that a final decision will be provided shortly.

17. As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.90. In months since (as of August 1, 2024) and as a result of the receipt of the NET Settlement funds, the Plan assets totaled approximately \$47,229,278.67.<sup>2</sup> The

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<sup>&</sup>lt;sup>2</sup> This amount does include the Settlement "A" NET proceeds totaling approximately \$10,562,285.37 which are held with Schwab for the benefit of the Plan.

largest factor in the reduction of the Plan assets is monthly benefit payments and other payments required for the administration of the Plan (i.e. accountant fees, actuarial fees, investment manager fees, benefits administration fees, etc.). It is important to note that during the months since the inception of this proceeding the Plan paid out monthly benefit payments, retroactive benefit payments and other payments and fees related to Plan maintenance and services at an average rate of approximately \$950,000 per month.

In an effort to protect and insulate the Plan from dramatic market fluctuations, the Receiver regularly reviews and adjusts the allocation of assets for investment risk. These reallocations have been relatively successful in insulating the Plan from market volatility and loses. The Receiver continues to work with the investment manager to regularly review and assess the allocation of investments so as to maximize the returns for the Plan while at the same time protecting it based on its status and unavoidable, unpredictable fluctuations of the markets.

18. In connection with the administration of the within proceeding, and since the filing of the Thirty-First Report and hearing on same, your Receiver has had additional receipts and disbursements, as identified below and as further detailed and set forth in the "Schedules of Receipts and Disbursements" attached hereto, 3 in all estate accounts ultimately maintained for the benefit of the Plan.

<u>SJH</u>	SRI Retirement Plan	<b>CCCB</b>	<b>SJHSRI</b>	<u>RWH</u>
Starting Cash	\$4,622,998.10	\$6,744.36	\$35,703.30	\$189,381.08
Receipts	\$382,521.29	\$1.69	\$45.82	\$839.41
Disbursements	\$2,115,220.04	\$0.00	\$0.00	\$0.00
Ending Balance	\$2,890,299.35	\$6,746.05	\$35,749.12	\$190,220.49

19. In connection with this Thirty-Second Report, your Receiver is requesting that the Court approve the Thirty-First Fee Application incurred for the three (3) month period from June 1, 2024, through, and including, August 31, 2024. The Receiver respectfully requests that this Court

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<sup>&</sup>lt;sup>3</sup> Cash-on-hand includes the funds received from Settlement "B" and funds transferred from the Liquidating Receiver in compliance with the Court's April 7, 2022, Order approving the Petition to Apply.

approve the Thirty-First Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver's Thirty-First Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Thirty-Second Report. Due to the Litigation and the related descriptions and narratives in time entries, to avoid any potential disclosure, strategy, attorney-client privileged communications, etc., the Receiver requests that the redacted invoices submitted to the Court be filed under seal.

WHEREFORE, your Receiver prays that this honorable Court enter an order or orders: (1) approving, confirming and ratifying all of the Receiver's acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Thirty-Second Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Thirty-First Fee Application for his services as Temporary and Permanent Receiver herein; (3) directing that this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the Receivership Estate; and (4) granting such further relief as this Honorable Court deems necessary and appropriate.

Respectfully submitted,

## /s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336) Solely in his capacity as Permanent Receiver for St. Josephs Health Services of Rhode Island Retirement Plan, and not individually One Citizens Plaza, 10<sup>th</sup> Floor

Providence, RI 02903 Tel: 401-490-3415

sdelsesto@pierceatwood.com Dated: September 16, 2024

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of September, 2024, I electronically filed and served the within document via the Electronic Case Filing System of the Superior Court with notice to all parties in the system.

/s/ Stephen F. Del Sesto

## SCHEDULES OF RECEIPTS AND DISBURSEMENTS

09/16/24 Accrual Basis

# St Joseph Health Services of RI Retirement Plan Transactions by Account 091624 As of September 16, 2024

Date	Maile
BankRI Ch	BankRI Checking Account
06/05/2024	
06/25/2024	
06/25/2024	
07/03/2024	
07/08/2024	428 The Hilb Group of New England, L
07/16/2024	
08/05/2024	429 Wistow Sheehan & Loveley, PC
08/08/2024	
08/19/2024	431 St Joe Health Services RI Retirem
08/20/2024	
08/20/2024	
09/05/2024	
09/09/2024	432 Wistow Sheehan & Loveley, PC
Total BankF	Total BankRI Checking Account
TOTAL	

09/16/24 Accrual Basis

## CCCB Transaction Detail by Account All Transactions

## SJHSRI General Fund Account Transaction Detail by Account December 16, 2022 through September 16, 2024

35 749 12	AO 000 3E	1001				
35,749.12	40,988.25	76,737.37		Total SJHSRI BankRI General Fund Acct	HSRI Ba	Total SJ
35,749.12		15.13	interest			08/30/2024
35,718.86		15.56	Interest			06/28/2024
35,703.30	6,834.00		Jan, Feb & April invoices	Consilio (formerly Xact)	112	06/03/2024
42,537.30		18.01	interest			05/31/2024
42,519.29		17.85	interest			04/30/2024
42,501.44	2,278.00		Inv #INV579325688	Consilio (formerly Xact)	111	04/08/2024
44,779.44		18.96	interest			03/29/2024
44,760.48		17.74	interest			02/29/2024
44,742.74	20.00		2024 Annual Report filing fee	RI Department of State	110	02/21/2024
44,762.74		19.44	interest			01/31/2024
44,743.30	2,278.00		Inv #INVCUS 1830166409941	Consilio (formerly Xact)	109	01/08/2024
47,021.30		20.59	interest			12/29/2023
47,000.71	2,278.00		Inv #INVCUS1830163334	Consilio (formerly Xact)	108	12/11/2023
49,278.71		60.20	interest			1/30/2023
49,218.51	2,278.00		Inv #INV581504	Consilio (formerly Xact)	107	11/20/2023
51,496.51		67.64	interest			10/31/2023
51,428.87	2,278.00		Inv # INV569366	Consilio (formerly Xact)	106	10/16/2023
53,706.87	2,500.00		Inv #K0077720; 2022 Form 990 prep & filing	Kahn Litwin Renza & Co., Ltd.	105	10/02/2023
56,206.87		71.08	interest			09/29/2023
56,135.79	2,278.00		Inv # INV557285	Consilio (formerly Xact)	104	09/15/2023
58,413.79		77.26	interest			08/31/2023
58,336.53	2,278.00		Inv #XDD076762	3 Xact Data Discovery	103	08/23/2023
60,614.53		79.49	interest			07/31/2023
60,535.04	2,278.00		Inv #XDD075178 6/30/23	2 Xact Data Discovery	102	07/28/2023
62.813.04		88.28	interest			06/30/2023
62,724.76	13,410.25		invoices from 12/2022 thru 5/2023	Xact Data Discovery	101	06/23/2023
76,135.01		4,975.00	final closeout funds from Hemmendinger's account			06/14/2023
71,160.01		89.94	interest			05/31/2023
71,070.07		86.93	interest			04/28/2023
70,983.14		89.72	interest			03/31/2023
70,893.42		80.94	interest			03/23/2023
70,812.48		37.55	interest			01/31/2023
70,774.93		70,774.93	closeout funds from Hemmendinger's account			01/19/2023
				SJHSRI BankRI General Fund Acct	BankRI	SJHSRI
במימיוסכ			A CONTRACTOR OF THE PROPERTY O	MANTEN CONTRACTOR CONT		

# RWH General Fund Account Transaction Detail by Account December 16, 2022 through September 16, 2024

24 625 07	120,100.10	100,000.02				
	125 760 75	150 306 62				TOTAL
24,635.87	125,760.75	150,396.62		Total RWH BankRI General Fund Acct	BankRI	Total RWI
24,616.59 24,618.68 24,620.70 24,622.78 24,633.78 24,633.78 24,635.87		9.7- 1.10 2.09 2.02 2.08 11.00 2.09	Subpoena service fee interest interest interest interest Subpoena fee (Francis v. Charlton Mem Hospital) interest			05/30/2024 05/31/2024 05/31/2024 06/28/2024 07/31/2024 08/14/2024 08/30/2024
25,045.17 25,055.78 24,605.78	450.00	9.93 10.61	Interest interest Inv #K0085134; 2023 1099 & form 1096 prep	Kahn Litwin Renza & Co., Ltd.	106	02/29/2024 03/29/2024 04/19/2024
25,033.54 25,044.64 25,055.24 25,035.24	20.00	52.95 11.00 10.60	Subpoena fee (Richter v. Pacifica Victoria, LP) interest 2024 Annual Report filing fee	RI Department of State	105	01/11/2024 01/31/2024 01/31/2024 02/21/2024
74,827.18 74,918.82 24,980.69	49,938.13	91.00 91.04	interest interest Court-approved fees & costs thru 11.30.23	Pierce Atwood, LLP	104	11/30/2023
77,232.10 74,732.10	2,500.00	94.45	interest   Invalues action) Inv #K0077721; 2022 form 990 prep & filing	Kahn Litwin Renza & Co., Ltd.	103	09/29/2023
76,898.90 76,996.21 77,093.65 77,104.65		91.28 97.31 97.44 11.00	interest interest interest interest Subpoena fee (Carchis WC action) Subpoena fees (Morales action)			06/30/2023 07/31/2023 08/31/2023 08/31/2023 09/06/2023
73,126.09 73,218.63 76,807.62 76,807.62		198.18 92.54 3,588.99 0.00	interest interest final closeout funds from Hememndinger's account VOID:	Xact Data Discovery	102	04/28/2023 05/31/2023 06/14/2023 06/23/2023
90,729.06 96,658.06 101,172.06 101,302.36 145,770.53 72,927.91	72,842.62	11.00 5,929.00 4,514.00 130.30 44,468.17	KoR Subpoena service fee Flint quarterly dist (reissue of ck dtd 11.23.22 (rec'd from BoA) Flint quarterly dist (rec'd from BoA) interest Horton (\$35,840.17) & Brown (\$8,628)quarterly distributions (rec'd from BoA) Court-approved fees & costs Final Report of Hemmendinger	BRCSM, LLP	101	03/02/2023 03/23/2023 03/23/2023 03/23/2023 03/31/2023 04/04/2023 04/20/2023
86,507.19 86,553.09 87,604.59 87,704.31 87,694.31 90,718.06	10.00	86,507.19 45.90 1,051.50 99.72 3,023.75	closeot funds from Hemmendinger's account Interest Steinrt semi-annual dist (rec'd from BoA) interest chargeback fee Knight quarterly dist (from BoA)			01/19/2023 01/31/2023 02/22/2023 02/22/2023 02/22/2023 02/24/2023 03/02/2023
Balance			Memo	Date Num Name RWH BankRI General Fund Acct	Num (RI Gene	Date RWH Ban

09/16/24 Accrual Basis

# RWH Cy Pres Account Transaction Detail by Account December 16, 2022 through September 16, 2024

TOTAL	Total RWI	08/30/2024	07/31/2024	06/28/2024	05/31/2024	04/30/2024	03/29/2024	02/29/2024	01/31/2024	12/29/2023	11/30/2023	10/31/2023	09/29/2023	08/31/2023	07/31/2023	06/30/2023	05/31/2023	04/28/2023	03/31/2023	02/28/2023	01/31/2023	01/19/2023	RWH Bar	Date
	Total RWH BankRI Cy Pres Acct																						RWH BankRI Cy Pres Acct	Num
	ğ																							Name
		interest	closeout funds from Hemmendinger's account		Memo																			
165,584.62	165,584.62	277.51	277.04	267.67	276.14	266.78	275.22	257.06	274.33	274.62	265.33	273.70	264.45	272.81	272.35	263.13	271.45	262.26	270.55	244.00	113.20	160,365.02		
0.00	0.00																							
165,584.62	165,584.62	165,584.62	165,307.11	165,030.07	164,762.40	164,486.26	164,219.48	163,944.26	163,687.20	163,412.87	163,138.25	162,872.92	162,599.22	162,334.77	162,061.96	161,789.61	161,526.48	161,255.03	160,992.77	160,722.22	160,478.22	160,365.02		Balance