

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND)

v.)

C.A. NO. PC-2017-3856)

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

REMOTELY ON AUGUST 25, 2020

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
JESSICA RIDER, ESQUIRE.....ATTORNEY GENERAL
STEVEN BOYAJIAN, ESQUIRE.....ANGELL PENSION

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 true and accurate transcript of a hearing done remotely to the best of my ability.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 TUESDAY, AUGUST 25, 2020

2 AFTERNOON SESSION

3 (The following hearing was taken remotely:)

4 THE COURT: I see everyone on the screen. Who is on
5 the call-in line.

6 MS. RIDER: It's Jessica Rider from the Attorney
7 General's Office.

8 THE COURT: Good afternoon, Jessica. I will ask
9 everyone to mute their microphones and have the clerk
10 turn on the public streaming.

11 THE CLERK: Public streaming is on, your Honor.

12 THE COURT: Very good. Madam clerk, if you would
13 call the case please.

14 THE CLERK: Your Honor, the matter before the Court
15 is PC-2017-3856, St. Joseph's Health Services of Rhode
16 Island v. St. Joseph's Health Services of Rhode Island
17 Retirement Plan. This is on for the Receiver's 14th
18 interim report and request for approval of fees. Would
19 the Receiver identify himself for the record.

20 MR. DEL SESTO: Thank you, your Honor. Stephen
21 Del Sesto, the Receiver for the St. Joseph's Health
22 Services of Rhode Island Pension Plan.

23 THE CLERK: And would the Attorney General identify
24 herself for the record.

25 MS. RIDER: Jessica Rider for the Attorney General's

1 Office.

2 MR. BOYAJIAN: Steven Boyajian for the Angell
3 Pension Group, your Honor.

4 THE COURT: Very good. The Court has had the
5 opportunity to review the report. The Receiver may
6 proceed.

7 MR. DEL SESTO: Thank you, your Honor. At the
8 outset, your Honor, I found out, I believe last night,
9 that the bill was not sent over to your Honor. I think
10 this is actually the second time this has happened. I
11 will send that over once it's ready, and I assume the
12 Court will reserve on any ruling on the fees until it has
13 a chance to review that bill. So I apologize for that
14 delay.

15 THE COURT: No problem at all.

16 MR. DEL SESTO: With regard to the report, your
17 Honor, we were last before your Honor on June 1, 2020.
18 As your Honor knows, typically we come before your Honor
19 approximately every 60 days, but due to the pandemic
20 courts were shut down and things were sent somewhat into
21 a tailspin so there was an extended period of time
22 between the 12th interim report and the 13th interim
23 report. Since the filing of the 13th, I will say, and
24 as your Honor is well aware, in the receivership
25 proceeding there has not been that much activity in this

1 proceeding in particular. That doesn't mean things
2 haven't been going on. It just means they have been
3 going in the other matters and in the periphery.

4 Other than those items identified in the report
5 relative to the federal litigation that is going on in
6 front of Judge Smith, the litigation between I guess what
7 is now the liquidating receiver and CCCB and Prospect as
8 well as the liquidating receivership, all of which are
9 mentioned in the report, and I know Attorney Hemmendinger
10 has also filed the second interim report with the clerk
11 recently. I don't know if it's been heard yet, but I
12 know it's been filed.

13 Other than that, your Honor, which those are moving
14 along, federal litigation, Judge Smith is really focusing
15 attention right now on the principle purpose organization
16 issue related to ERISA. There has been some discovery
17 relative to that. We have deposed -- the plaintiffs in
18 that matter have deposed two individuals. There was an
19 adjustment to the discovery schedule, but approximately
20 two or three weeks ago we deposed two individuals related
21 to Prospect on that issue and there's been summary
22 judgment motions that have come forward as well, none of
23 which have been heard, but that process is moving
24 forward.

25 The one major issue that I want to bring to the

1 Court's attention with regard to the activity, is
2 actually not related to any of the matters that your
3 Honor is aware of, the receivership, the federal
4 litigation, the liquidating receivership, or the
5 litigation with CCCB, but rather Prospect Medical
6 Holdings has filed an application for a change of
7 effective control with the Department of Health and the
8 Rhode Island Attorney General and right now that
9 application or at least it's at the stage of the health
10 services council. I know your Honor is going to be
11 hearing a motion that has been filed relative to
12 Prospect's counsel in that matter and that has yet to be
13 ruled on.

14 But, quite frankly, your Honor, the Receiver,
15 myself, the liquidating receiver, and the other
16 plaintiffs in the federal litigation, as well as the
17 union, Arlene Violet's group, the group that she
18 represents, and others have objected to that change of
19 effective control application. And I don't want to speak
20 for the attorney general. Attorney Rider is on the call.
21 I believe the Attorney General's Office, although didn't
22 object, maybe raised caution is a best way to put it to
23 the health services council to maybe move a little more
24 slowly and deliberately. Primarily because, your Honor,
25 we, quite frankly, don't really understand the deal that

1 is being presented to the state regulators with regard to
2 that change of effective control.

3 In particular, we don't really understand the
4 acquisition of Leonard Green's interest in the hospital.
5 He owns approximately 60 percent of that system and he's
6 looking to sell that interest to two of the principals
7 who have been involved with Prospect since the beginning,
8 Dr. Lee and Mr. Topper. And the issue, your Honor, is
9 that they had valued -- we don't know the terms of the
10 deal but at least the cash portion is \$16 million for Mr.
11 Green is 60 percent. That is an alarming the number when
12 you consider that these hospitals were valued a few years
13 ago at about \$300 million. So that \$60 million figure
14 for 60 percent is something that at least makes us
15 scratch our heads and we haven't gotten enough
16 information. And because we don't have enough
17 information we don't know what the impact will be on the
18 hospitals, which also impacts, obviously, the litigation
19 in the federal suit and whether or not there is any
20 collectability or the difficulties of collectability, the
21 solvency of the network and things of that nature.

22 So we have had at least, I believe, only one meeting
23 before health services council thus far and it has been
24 continued for a second meeting. Like I said, if the
25 Attorney General's Office wants to weigh in today, they

1 can, but I believe that the representative at the health
2 services council from that office also raised just
3 concerns and asked the council to dig a little deeper
4 into that issue. That issue, by the way, is related to
5 the matter that is coming before your Honor with regard
6 to Prospect's counsel. So I'm sure I am going to be much
7 more brief than Attorney Wistow will be in front of you
8 when that hearing comes up in terms of the details as to
9 why that issue is of concern right now. So I won't waste
10 the Court's time in arguing what is going to be argued in
11 a week or so.

12 THE COURT: Thank you.

13 MR. DEL SESTO: Other than that, your Honor, the
14 plan conditions to pay out its benefits. We have as of
15 the end of I believe it's June of 2020, we had slightly
16 over \$60 million in plan assets. And as your Honor
17 knows, and as I indicated in the report, we pay out
18 approximately a million dollars a month in benefits and
19 other plan related expenses. So there is that erosion of
20 approximately \$12 million a year just for those payments.
21 And although the market was quite volatile and there was
22 a substantial drop at the early part of the year as a
23 result of the pandemic, the market did rebound and so the
24 losses were essentially recovered from there. As the
25 saying goes, sometimes it's better to be lucky than good.

1 And your Honor knows, I did redo the allocation of
2 investments a little less than a year ago and I made them
3 more conservative so as to insulate the plan from a
4 potential volatile market.

5 Of course, I had no idea that there was a pandemic
6 that was going to hit. But, again, being lucky is better
7 than being good. We made the adjustment nonetheless, and
8 at points where the market was down about 23, 24, 25
9 percent, the plan was only down about eight or nine
10 percent because of the adjustments that were made. So
11 the adjustments that were made did, in fact, properly
12 insulate the plan. Of course on the flip side, because
13 the investments were conservative, our recovery was only
14 as modest as well.

15 THE COURT: So at the bottom you didn't have the
16 foresight to go back to the aggressive side.

17 MR. DEL SESTO: I was only half good and lucky, your
18 Honor, exactly. I have to learn to complete the circle.
19 I have to get my timing right. So with that, your Honor,
20 as a result \$60 million based on investment income that
21 was projected and based on the monthly payouts is
22 approximately where we expected to be in terms of cash.
23 So we are no worse off than where we projected to be at
24 this point in time.

25 I can let your Honor know that we have, as we're now

1 required to do because we made the election to be covered
2 under ERISA, we have filed our 5500s. We have prepared
3 and filed our audit. We actually have started the audit
4 for this last plan year already and we paid our premium
5 to the PBGC, which this year, as your Honor knows, it's
6 based on a percentage of funds. Here the payment was
7 approximately \$1.4 million for that PBGC payment. So I
8 believe we have now made two payments to PBGC. So we
9 are three years away from our phase in with the PBGC,
10 which is good news for the plan. Although the PBGC still
11 has not taken any position on this plan. They are at
12 least not taking the position that we shouldn't be paying
13 them any money and they are taking the money and we are
14 moving towards a point where they will have to take some
15 action if necessary in the future.

16 With that, your Honor, unless your Honor has any
17 questions, I don't believe that there is anything else.
18 I will tell your Honor we have, as has been the case all
19 the way through, sometimes the discussions are more
20 active than other times, but we continue to have
21 discussions with some of the defendants in the federal
22 litigation with regard to potential for settlement. And,
23 obviously, I would be in front of your Honor with a
24 petition to approve a settlement if we had anything
25 concrete. At least so your Honor knows and the plan

1 participants know, those discussions -- our doors are
2 always open and our phones are always going to be
3 answered for any potential discussion while we continue
4 to do that.

5 Also, it's probably important to let your Honor know
6 that because of the pandemic I did have to stop the town
7 hall meetings, but about a week ago we went into Zoom
8 mode. We had our first Zoom town hall meeting. We had
9 about 90 participants on that Zoom call who were all able
10 to ask questions. Until things change allowing us
11 together in person I am going to continue the town hall
12 meetings on the same schedule except through the Zoom
13 format.

14 Unless your Honor has any questions, that concludes
15 my report and at the conclusion of my report I am asking
16 the Court to approve, confirm, and ratify all of my acts
17 and doings since the 13th interim report, approve the
18 report, and, as I said, once I get the fee application to
19 your Honor then to make a ruling on the appropriateness
20 of that fee application.

21 THE COURT: Thank you very much. There were no
22 objections filed. Do either counsel on the line wish to
23 be heard before the Court?

24 MR. BOYAJIAN: No, your Honor.

25 THE COURT: Hearing none, the Court approves the

1 14th interim report of the Special Master ratifying its
2 acts and deeds from the last 13th report. And with
3 respect to the fees, costs, and expenses, as counsel
4 mentioned, the Court is going to reserve so it has the
5 opportunity to review the unredacted copies of the
6 billing records. And as soon as that comes in, the Court
7 will issue a ruling on that as well. So what I would ask
8 counsel to do is if you could submit an order on the
9 first part from today and reserving on the other and then
10 Ms. Miley will be in touch with you in terms of
11 submitting an order with respect to the fee request as
12 soon as possible.

13 MR. DEL SESTO: That will be fine, your Honor.

14 THE COURT: Thank you all very much. Does the court
15 reporter need any clarification on anything?

16 COURT REPORTER: No, thank you.

17 THE COURT: Okay. Very good. We are going to
18 conclude this proceeding. Madam Clerk, if you would take
19 us off the public streaming.

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