

NJ Hospital, Nurses Ask Court To Bless \$40M ERISA Deal

By **Bill Wichert**

Law360, Clifton, N.J. (August 4, 2017, 5:29 PM EDT) -- Counsel for former nurses called on a New Jersey federal court Thursday to approve a more than \$40 million settlement in a putative consolidated class action alleging St. Joseph's Healthcare System violated the federal Employee Retirement Income Security Act, saying a related high court ruling dealt a blow to their case.

In seeking preliminary approval of the settlement, plaintiffs told the court Thursday that St. Joseph's has already contributed \$45 million to an employee pension plan as part of the proposed deal, representing \$2.5 million more than the amount required under the tentative agreement.

That payment has reduced the underfunding of the plan by about half, according to the plaintiffs' brief in support of their unopposed motion.

The brief states that the proposed settlement "provides certain and immediate relief to the class, removing the inherent uncertainty of litigation and improving the retirement security of all plan participants."

"The settlement agreement provides the class with both significant monetary and equitable consideration for their claims, commensurate with the remedies plaintiffs would seek if this case proceeded to trial," according to the brief.

The strength of the deal is bolstered by the U.S. Supreme Court's rejection of one of plaintiffs' central legal theories, the brief states.

In the proposed class action, plaintiffs have asserted that St. Joseph's unlawfully denied ERISA protections to participants and beneficiaries of the pension plan by incorrectly claiming that its plan is exempt under ERISA because it qualifies as a church plan. One of the plaintiffs' central arguments has been that a church plan must be established by a church to qualify for the exemption.

But in a June 5 opinion, the Supreme Court extended ERISA's religious exemption provision to benefit plans maintained by church affiliates, regardless of whether an actual church established the plan. The decision, which included a concurring opinion by one justice, overturned federal circuit court rulings that the exemption applied only if the church established the benefit plan.

"That decision effectively eliminated plaintiff's argument here that only a church may establish a church plan," according to the plaintiffs' brief.

“Though plaintiff advances other strong arguments and theories not reached by the Supreme Court, it remains true that plaintiff’s case was negatively impacted by the Supreme Court’s decision,” the brief states. “This settlement is particularly favorable for the proposed class, in light of this uncertain and high-stakes backdrop.”

The Supreme Court ruling was handed down after the parties in the St. Joseph's case had been involved in settlement negotiations and had memorialized the key terms of the agreement in a preliminary “term sheet,” according to the brief.

Among other provisions, the proposed settlement includes a guarantee that accrued benefits will be paid over a seven-year period, the brief states. The deal also provides certain protections similar to ERISA provisions, such as summary plan descriptions and pension benefit statements, according to the brief.

The proposed settlement class includes all current and former participants or beneficiaries of the plan as of the effective date of the settlement, the brief states.

Under the tentative agreement, plaintiffs' lawyers also will seek attorneys' fees, expenses and incentive awards for named plaintiffs in a total amount not to exceed \$2.5 million, the brief states.

The named plaintiffs are Donna Garbaccio, who worked at St. Joseph’s Hospital and Medical Center in Paterson, New Jersey, from 1978 until 1998; Mary Lynne Barker, who worked for the medical center from 1968 to 2003; Anne Marie Dalio, who worked there from 1984 to 1994; and Dorothy Flar, who worked there from 1990 to 1995.

One lawsuit was filed on Garbaccio's behalf on May 13, 2016, and the second lawsuit was filed three days later on behalf of the other women. The court later consolidated the actions.

In a statement on Friday, St. Joseph's told Law360, “St. Joseph’s Healthcare System is pleased to have reached a settlement on the pension plan. We look forward to continuing to provide sound retirement options that are in the best interest of our employees — our most valuable resource.”

Counsel for St. Joseph's declined to comment Friday. Counsel for the plaintiffs could not immediately be reached for comment.

The plaintiffs are represented by Scott M. Lempert, Karen L. Handorf, Michelle C. Yau and Mary J. Bortscheller of Cohen Milstein Sellers & Toll PLLC and Laura R. Gerber, Lynn Lincoln Sarko, Havila C. Unrein and Ron Kilgard of Keller Rohrback LLP.

St. Joseph's is represented by David R. Kott and Christopher S. Mayer of McCarter & English LLP and Howard Shapiro and Stacey C.S. Cerrone of Proskauer Rose LLP.

The case is Garbaccio v. St. Joseph's Hospital and Medical Center and subsidiaries et al., case number 2:16-cv-02740, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Jeannie O'Sullivan. Editing by Bruce Goldman.