

NJ Hospital, Nurses Reach Tentative Deal In ERISA Suit

By **Abraham Moussako**

Law360, New York (June 8, 2017, 7:32 PM EDT) -- St. Joseph's Healthcare System has reached a tentative settlement with nurses in a putative consolidated class action alleging the medical center violated the federal Employee Retirement Income Security Act by underfunding an employee pension plan by at least \$183 million, according to documents filed in New Jersey federal court Thursday.

U.S. District Judge John Michael Vazquez on Thursday directed the court to reopen the proposed class action following a Wednesday notice of settlement from lawyers for St. Joseph's Healthcare System Inc. and St. Joseph's nurse Donna Garbaccio. The notice says the settlement will be executed on July 6, and will be submitted to the court for approval later that month.

Suits filed in May 2016 and subsequently consolidated dispute St. Joseph's claim that the plan is exempt under ERISA because it qualifies as a church plan. The complaints, which were filed by different law firms, say the plan is actually maintained by a business — not a church. In March of this year, Cohen Milstein Sellers & Toll PLLC and Keller Rohrback LLP were recommended by U.S. Magistrate Judge James B. Clark III to lead the consolidated class action.

Counsel at both lead firms for the plaintiffs, as well as counsel for St. Joseph's, were not immediately available for comment on Thursday. Counsel for Mary Lynne Barker, another plaintiff, directed inquiries to lead counsel.

Cohen Milstein and Keller Rohrback filed their suit on May 13, 2016 on behalf of Garbaccio, who worked at St. Joseph's Hospital and Medical Center in Paterson, New Jersey, from 1978 until 1998.

Three days later, Kessler Topaz and Izard Kindall filed a complaint on behalf of 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.

The Garbaccio complaint says the pension plan was underfunded by about \$183 million as of Dec. 31, 2014, while the other complaint puts the figure at \$212.4 million.

On July 12, Judge Clark consolidated the actions and ordered the plaintiffs to file a master consolidated complaint by Aug. 11.

But after the parties informed the court that they could not reach an agreement, Judge Vazquez on Aug.

12 granted their joint request to file the competing motions seeking appointment as interim co-lead class counsel.

In their competing motions, the two sets of law firms had touted their experiences in church plan litigation, their financial resources and the detailed investigations they conducted before filing their respective complaints.

Judge Clark ruled in March that he is “confident that either set of counsel would be able to devote the necessary resources required by these actions,” but he found that Cohen Milstein and Keller Rohrback had the edge in terms of their experience in church plan matters and their effort to identify and investigate potential claims.

Garbaccio is 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.

Barker and her co-plaintiffs are represented by Edward W. Ciolko, David A. Bocian, Mark K. Gyandoh and Julie Siebert-Johnson of Kessler Topaz Meltzer & Check LLP, and Robert A. Izard, Mark P. Kindall and Doug Needham of Izard Kindall & Raabe 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 Bill Wichert and Jeannie O'Sullivan. Editing by Pamela Wilkinson.