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M E M O R A N D U M

To:	Board of Trustees Industry and Local 338 Pension Fund
From:	Marc A. Tenenbaum Virginia & Ambinder, LLP
Re:	The College of New Rochelle
Date:	January 13, 2020

On September 20, 2019, after ceasing operations, The College of New Rochelle (the "Debtor") filed a petition for relief under Chapter 11 of the Bankruptcy Code. According to the petition, the Industry and Local 338 Pension Fund (the "Fund") was the Debtor's largest general unsecured creditor. On October 15, 2019, the Trustees retained Virginia & Ambinder, LLP ("V&A") to represent the Fund in the Debtor's bankruptcy case. On December 17, 2019, V&A filed a proof of claim on behalf of the Fund in the amount of $4,114,249.72, consisting of withdrawal liability in the amount of $3,972,338.00, retroactive contribution increases in the amount of $135,431.40, the findings of an audit covering 2016 through 2018 in the principal amount of $5,517.15, interest thereon in the amount of $374.33, and interest on other late payments in the amount of $588.84.

Meanwhile, V&A requested that the United States Trustee consider appointing the Fund as a member of an official committee of unsecured creditors. On October 30, 2019, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") consisting of the Fund; CulinArt, Inc. (which provided cafeteria services to the Debtor); and Susan Canning (one of 14 faculty members who allege that they are entitled to back pay on the ground that Debtor wrongfully terminated their employment). V&A has participated in the Committee's meetings, all of which have taken place by telephone.

The Committee's task is to advance the interests of all unsecured creditors. To assist it in this task, the Debtor has provided the Committee with certain financial information that is not available to the public. This memorandum includes non-public information that the Trustees and other representatives of the Fund are obligated to keep confidential.

The Committee is entitled to retain professional advisors at the Debtor's expense. On November 4, 2019, after interviewing three law firms, the Committee retained Sills Cummis & Gross P.C. ("SC&G") to serve as the Committee's counsel. Andrew Sherman, Esq., who has extensive experience in bankruptcies of non-profit organizations, is leading SC&G's

representation of the Committee. The bankruptcy court approved the Committee's retention of SC&G, and will be required to approve SC&G fees. The Committee concluded that there was no immediate need to retain a financial advisor, although it may become necessary to do so in the future.

The Debtor's primary asset was its 15.6 acre campus. On November 21-22, 2019, following extensive marketing efforts, the Debtor conducted an auction for the sale of the campus in accordance with court-approved procedures. There were three bidders, all of which were not-for-profit organizations. The opening bid was $21 million. Following several rounds of bidding, the successful bidder was the Trustees of the Masonic Hall and Asylum Fund, whose final bid was $32 million. We understand that for-profit developers, which might have paid substantially more, decided not to participate in the auction because the City of New Rochelle was reluctant to re-zone the property to permit the construction of a high-rise residential building.

On November 27, 2019, the bankruptcy court approved the sale of the property from the Debtor to the Trustees of the Masonic Hall and Asylum Fund. In January 2020, the sale was consummated. (Mercy College, which leased the campus from the Debtor shortly before the bankruptcy filing, retains the right to occupy the campus until the summer of 2021.)

On December 27, 2019, the Debtor filed a proposed plan of liquidation pursuant to which the Debtor's assets would be transferred to a liquidating trust for the benefit of creditors. In addition to the net proceeds of the sale of the real estate, the Debtor's assets include artwork, gymnasium equipment, furniture, fixtures, and miscellaneous personal property. The Debtor may also recover funds from prosecuting various causes of action. The Debtor's current chief restructuring officer would serve as the liquidating trustee, and would distribute the Debtor's assets to creditors in a prescribed order of priority.

Over the years, the Debtor had borrowed money from Citizens Bank, Key Bank, and the Carney Family Charitable Foundation, and had issued bonds through the New Rochelle Industrial Development Agency ("NRIDA"). These loans and bonds were secured by substantially all of the Debtor's real and personal property. Consequently, the banks, the foundation, and the NRIDA have secured claims in the bankruptcy case. Although the Committee is still performing its due diligence regarding the amounts of these claims, the Debtor has conceded that the total amount of these claims is more than $48 million. To finance its bankruptcy case, the Debtor also borrowed approximately $3 million from SummitBridge National Investments VII LLC. By court order, SummitBridge has a secured claim that is senior to that of the other four lenders. In addition, the Debtor estimates that the Internal Revenue Service and the State of New York have secured and/or priority tax claims totaling more than $13 million. Thus, the claims of the lenders and the taxing authorities total more than $64 million.

The Debtor projects that, under the plan of liquidation, no assets will be available for distribution to general unsecured creditors such as the Fund. There is a good chance that the Debtor is correct, because the proceeds of the sale of the Debtor's real and personal property will be insufficient to cover the claims of the lenders and the taxing authorities.

However, the Committee is exploring whether the Debtor possesses any valid causes of action that could conceivably lead to a partial recovery for general unsecured creditors. The Debtor's former controller was convicted of fraud and failure to pay federal payroll taxes. According to the Committee's counsel, the Debtor informally asserted malpractice claims against its auditor, KPMG, on the ground that it failed to detect the controller's fraud. According to the

Committee's counsel, the damages arguably exceeded $20 million. According to the Committee's counsel, KPMG and the Debtor reached a confidential settlement, well before the bankruptcy, pursuant to which KPMG paid $5 million to the Debtor in full satisfaction of those claims. According to the Committee's counsel, the former president of the Debtor was also a former partner of KPMG. The Committee's counsel is in the early stages of investigating whether there are any grounds for invalidating the settlement and asserting additional claims against KPMG. The Committee's counsel is also in the early stages of investigating whether officers of the Debtor, or members of the Debtor's board of trustees, could possibly be held responsible. According to the Committee's counsel, there is an insurance policy that could cover any damages for which the officers or board members are held liable.

At the request of the Committee's counsel, the Debtor included in the proposed plan of liquidation a provision authorizing the Committee, on behalf of the Debtor's estate, to prosecute the foregoing potential claims, or any other tort claims that the Debtor might possess, and "carving out" 50% of the net proceeds of such claims from the taxing authorities' secured claims. The taxing authorities cannot legally be required to agree to this provision, but they might be persuaded that a carve-out of 50% (or some other percentage to be negotiated) would further their interests because, in the absence of a carve-out, general unsecured creditors would have no chance of recovering any of the litigation proceeds, and the Committee would consequently have no incentive to prosecute such claims. If the Committee does not prosecute the tort claims, then those claims would yield no recovery for anyone, including the taxing authorities (except in the unlikely event that the taxing authorities themselves prosecute those claims).

For general unsecured creditors to receive a share of any valid tort claims, certain of the secured lenders would also need to waive – or be determined by the court not to be entitled to – any "superpriority" claim. The Debtor asserts that, under the court order authorizing financing at the outset of the bankruptcy case, certain lenders hold superpriority claims to the extent that their claims exceed the value of the underlying collateral securing them. The Committee will take the position that the excess of the lenders' claims over the value of the collateral should be treated as general unsecured "deficiency" claims, rather than as superpriority claims. Even if that argument prevails, however, there would be tens of millions of dollars of allowed general unsecured claims. Accordingly, each creditor's *pro rata* share of any recovery would likely be relatively small.

Thus far, the Fund has incurred attorneys' fees in the amount of $21,650 and costs in the amount of $70 in connection with V&A's work on this case. We will continue, as cost-efficiently as possible, to monitor the case, to assist the Fund in performing its duties as a member of the Committee, and to keep the Trustees and Fund Counsel apprised of pertinent developments.

M.T.

cc: Alicia Cochran
Elizabeth O'Leary, Esq.