

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

IN RE: Singing River Health System Employees' Retirement Plan and Trust

Almond, *et al.* v. Singing River Health System, *et al.*; Cause No. 2014-2653

Thompson, *et al.* v. Singing River Health System, *et al.*; Cause No. 2014-2695

Bosarge, *et al.* v. Singing River Health System, *et al.*; Cause No. 2014-2729

Aguillar, *et al.* v. Singing River Health System, *et al.*; Cause No. 2014-2753

Drury, *et al.* v. Singing River Health System, *et al.*; Cause No. 2015-0001

Broun, *et al.* v. Singing River Health System, *et al.*; Cause No. 2015-0027

Eiland, *et al.* v. Singing River Health System, *et al.*; Cause No. 2015-0030

Lay, *et al.* v. Singing River Health System, *et al.*; Cause No. 2015-0060

COMPLAINT
BY SPECIAL FIDUCIARY AGAINST
CERTAIN DEFENDANTS IN THE CAPTIONED CAUSES OF ACTION

Stephen B. Simpson, court-appointed Special Fiduciary of the Singing River Health System Employees' Retirement Plan and Trust (hereinafter "Plan and Trust"), attached hereto as Exhibit 1, complains against certain defendants in the captioned causes of the action pending in this court, as follows:

JURISDICTION AND VENUE

This court has jurisdiction of the subject matter and personal jurisdiction over the defendants, and venue is proper in Jackson County, Mississippi. This complaint seeks equitable relief under the Mississippi Uniform Trust Code as well as other equitable relief.

PARTIES DEFENDANT

SRHS Defendants

1. Defendant Singing River Hospital System is a 501(c)(3) non-profit corporation organized under and governed by Mississippi law, and is headquartered in Jackson County, Mississippi, and is the employer responsible for maintaining the Plan and Trust.

2. Defendant Singing River Health System is a 501(c)(3) non-profit corporation organized under and governed by Mississippi law, and is headquartered in Jackson County, Mississippi, and is the employer responsible for maintaining the Plan and Trust.

Individual Defendants

3. At some or all relevant times, the following individual defendants, Mississippi residents except as otherwise noted, served on the Singing River Health System Board of Trustees and had fiduciary oversight of the Plan and Trust:

Michael J. Heidelberg
Tommy Leonard
Morris G. Strickland
Ira Polk
Stephen Nunenmacher
Hugo Quintana
Allen Cronier
William Descher
Joseph Vice
Eric Washington
Marva Fairley-Tanner
Martin Bydalek (a Tennessee resident)

The Executive Leadership Team Defendants

4. Defendant Gary C. "Chris" Anderson, a Mississippi resident, at all relevant times served as the Chief Executive Officer of the Singing River Health System until March 2014, and had fiduciary oversight of the Plan and Trust.

5. Defendant Stephanie Barnes Taylor, a Mississippi resident, at all relevant times served as Chief Legal Officer and General Counsel of Singing River Health System from at least 2009 to 2014, as Chief Compliance Officer of Singing River Health System during all or part of that period, and as a former member of the Singing River Health System Retirement Plan Benefits Committee; as such, she also had fiduciary oversight of the Plan and Trust.

6. Defendant Michael Crews, a Mississippi resident, is the former Chief Financial Officer of the Singing River Health System and had fiduciary oversight of the Plan and Trust.

7. Defendant Paul Grayson “Nebo” Carter, Jr., a Mississippi resident, is the former Chief Human Resources Officer for the Singing River Health System and had fiduciary oversight of the Plan and Trust.

SERVICE OF PROCESS

Pursuant to Rule 24(c) of Mississippi Rules of Civil Procedure, all of the parties may be served with process as provided in Rule 5(b)(1) of the Mississippi Rules of Civil Procedure, by service upon the parties’ attorneys of record in these proceedings.

FACTS

1. The Singing River Health System (hereinafter “SRHS”) operates two hospitals, Singing River Hospital in Pascagoula and Ocean Springs Hospital, in addition to a number of community medical clinics and doctors’ offices throughout the Gulf Coast, and is one of the largest employers in Jackson County, with approximately 2,400 employees and over 600 retirees.

2. The present governance and leadership of SRHS is composed of two groups: (i) the Board of Trustees, which holds all key operational powers, including approving long-range strategic plans, allocation of capital, joint ventures, and major acquisitions and

sales; and (ii) the Executive Leadership Team, which is appointed by the Board and charged with providing leadership and organizational management in the areas of operations, mission integration, finance and support services, as well as leadership in the strategic direction of the organization.

3. SHRS maintains the Plan and Trust, a defined benefit pension plan covering all of its full-time employees who were hired before October 1, 2011.

4. SRHS created the Plan and Trust in 1983 following the decision to cut ties with the Public Employees' Retirement System of Mississippi in order to self-administer a similar Plan and Trust available only to the SRHS employees.

5. According to Plan and Trust documents, the SRHS is required to "make such contributions from time to time, which . . . shall be necessary as determined by the Actuary to provide the benefits of this Plan."

6. The Plan and Trust designates SRHS as the Plan Administrator "to administer the Plan in accordance with its terms." Plan and Trust § 10.01. The Plan and Trust also names the SRHS as a fiduciary of the Trust. Plan and Trust § 10.03. SRHS, through its Trustees, employed professionals such as accountants, actuaries, and attorneys to advise SRHS and to make accountings and calculations necessary to administer the Plan and Trust.

7. The SRHS Board of Trustees had the responsibility for determining the amount of contributions to be made by SRHS, subject to the advice and recommendations of an actuary, and the employer had the responsibility for actually making the contributions necessary to provide benefits as described under the Plan and Trust. Plan and Trust §§ 10.02 and 10.03.

8. Article XIV of the Plan establishes a Trust Fund (hereinafter “Trust Fund” or “Retirement Trust”) in which member and employer contributions are deposited. Plan and Trust § 14.01. The Plan and Trust also created and stated duties for the Trustee of the Retirement Trust, which was required to be either: (a) “a corporation authorized to conduct a banking or trust business and/or (b) one (1) or more individuals.” Plan and Trust § 15.01. Although ostensibly separate from the SRHS Board of Trustees pursuant to Article XV, the Trustee for the Retirement Trust was primarily comprised of members of the SRHS Board of Trustees and/or the SRHS Executive Leadership Team.

9. The SRHS Board of Trustees had the sole authority to appoint the Retirement Trust Trustee, Plan and Trust § 15.14, and the sole authority remove Retirement Trust Trustee, Plan and Trust §15.08. Furthermore, the employer, by and through the SRHS Board of Trustees, had the sole authority to amend or terminate the Trust. Plan and Trust §§ 11.01 and 12.01.

10. The Plan and Trust designates a Retirement Trust Trustee as a fiduciary with the “exclusive responsibility for and all powers necessary to perform the following duties and functions:

(a) To receive, hold, preserve, manage, and at the direction of the Plan Administrator, invest and re-invest the Trust Fund, so that the Trust Fund's integrity and safety will be maintained for the purpose of the Plan;

(b) To make disbursements from the Plan, to or for the benefit of Plan Members, their heirs and beneficiaries, as may be directed from time to time by the Committee;

(c) To perform such additional duties and functions as may be requested from time to time by the Board of Trustees of the Employer, the Plan Administrator, or the Committee.” Plan and Trust § 15.01.

In performing its duties, a Retirement Trust Trustee was charged with "do[ing] so in the interest of the members and beneficiaries solely, using the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character.” Plan and Trust § 15.02.

11. A Retirement Trust Trustee was also charged with “keep[ing] proper accounts of all investments, receipts, disbursements, and other transactions effected by it” under the Plan. Plan and Trust § 15.06.

12. On September 15, 2011, then Chief Executive Officer Chris Anderson issued a memorandum which informed all employees that effective October 1, 2011, the Retirement Plan would be closed to employees hired on or after that date, and assured employees that the retirement plan would “remain in effect for all current employees.”

13. On October 1, 2011, the Plan was frozen to new employees.

14. As of November 2014, the Trust Fund was unfunded by at least \$149 million.

15. The Plan and Trust is a plan, fund, or program that was established or maintained by SRHS and/or the SRHS Defendants and by which its express terms and surrounding circumstances provides retirement income to employees and/or result in the deferral of income by employees to the termination of their employment or beyond.

16. The Plan and Trust does not provide for an individual account for each participant and does not provide benefits solely upon the amount contributed to a participant's account.

17. As an employer establishing and/or maintaining the SHRS Plan and Trust, Defendant SRHS and/or the SRHS Defendants are and have been the Plan and Trust Sponsor.

18. Upon information and belief, the terms of the instrument under which the Plan and Trust is operated specifically designate the "Employer, acting through its Executive Director," to be the Plan Administrator. Plan and Trust § 10.01. As such, SRHS and/or the SRHS Defendants are also fiduciaries with respect to the Plan and Trust, because the Plan Administrator, by the very nature of the position, has discretionary authority or responsibility in the administration of the plans.

19. SRHS, the SRHS Defendants, the Individual Defendants and the Executive Leadership Team are also fiduciaries with respect to the Plan and Trust because they exercise discretionary authority or discretionary control respecting management of the Plan and Trust, exercise authority and control respecting management or disposition of the Plan and Trust's assets, and/or have discretionary authority or discretionary responsibility in the administration of the Plan and Trust.

CAUSES OF ACTION

As to all the following counts, the Special Fiduciary repeats all the foregoing allegations and incorporates them herein by reference:

COUNT 1 **Accounting**

1. Employees are entitled to an accounting of all contributions to the Plan and Trust and payments from the Plan and Trust.

COUNT 2
Declaratory Judgment

2. Employees are entitled to a declaratory judgment under Rule 57 of the Mississippi Rules of Civil Procedure that the defendants cannot decline to contribute to the Plan and Trust and must make contributions so the Plan and Trust has sufficient funding in accordance with the terms of the Plan and Trust; that the defendants' failure to contribute to the Plan and Trust in amounts consistent with the Plan and Trust's terms constituted a breach of contract; and that the defendants' decision annually since 2009 to refuse to contribute to and/or inadequately fund the Plan and Trust violated the Contract Clause and the Taking Clause and the United States Constitution.

COUNT 3
Injunctive Relief

3. The Special Fiduciary, on behalf of the Plan and Trust and all its members, is entitled to a preliminary and permanent injunction that the defendants cannot decline to contribute to and/or inadequately fund the Plan and Trust and must make contributions so the Plan and Trust has sufficient funding in accordance with its terms.

COUNT 4
Specific Performance

4. Specific performance is due from all the defendants.
5. Employees entered into a written contract concerning benefits available as employees of SRHS.
6. Employees have complied with all applicable duties imposed by the defendants in order to receive any retirement benefits.

7. The defendants have failed to make the mandatory contributions required to adequately pay for the liabilities of Plan and Trust.

8. The defendants now refuse to provide the benefits as defined.

9. Specific performance is due of the defendants regarding the retirement benefits.

COUNT 5
Constructive Trust

10. A constructive trust for funds and monies wrongfully retained and converted by the defendants should be created.

11. The defendants wrongfully failed to make the mandatory contributions to the Plan and Trust to ensure its financial viability.

12. The defendants failed to notify Employees that the Plan and Trust was receiving none of the mandatory contributions SRHS was required to make.

13. The defendants continued to assert that the Plan and Trust was fiscally sound and able to provide for its members despite knowledge to the contrary.

COUNT 6
Mississippi Uniform Trust Code Violations

14. The Retirement Trust is an express trust created for the benefit of Employees.

15. The Retirement Trust is an express trust and is therefore subject to the provisions of the Mississippi Uniform Trust Code, Miss. Code Ann. §91-8-101 *et seq.*, effective July 1, 2014, and applicable to all existing trusts. Miss. Code Ann. § 91-8-1106.

16. The Uniform Trust Code establishes a statutory cause of action for a breach of trust. Miss. Code Ann. §§ 91-8-208(c)(13); 91-8-1001(a).

17. Mississippi common law of trusts and principles of equity supplement the statutory code, except to the extent modified by the Uniform Trust Code or another Mississippi statute. Miss. Code Ann. § 91-8-106.

18. The Retirement Trust Trustees have a duty to administer the Trust such that “all assets are delivered in good faith, in accordance with [the Trust’s] terms and purposes and the interests of the beneficiaries,” and in accordance with the Uniform Trust Code and Mississippi common law. *See* Miss. Code Ann. §§ 91-8-106; 91-8-801.

19. The Retirement Trust Trustees have a duty to administer the trust “solely in the interests of the beneficiaries,” in accordance with the Mississippi statutory and common law. *See* Miss. Code Ann. §§ 91-8-106; 91-8-802.

20. The Retirement Trust Trustees have a duty to “administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust.” The Retirement Trust Trustees must “exercise reasonable care, skill, and caution” in satisfying this standard, in accordance with Mississippi statutory and common law. Miss. Code Ann. §§ 91-8-106; 91-8-804.

21. The Retirement Trust Trustees have a duty to “take reasonable steps to take control of and protect the trust property.” Miss. Code Ann. §§ 91-8-106; 91-8-809.

22. The Retirement Trust Trustees also have a duty to “take reasonable steps to enforce claims of the trust.” Miss. Code Ann. §§ 91-8-106; 91-8-811.

23. The Retirement Trust Trustees have a duty to “take reasonable steps to compel a former trustee or other person to delivery trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.” Miss. Code Ann. §§ 91-8-106; 91-8-812.

24. The Retirement Trust Trustees have a duty to “keep the beneficiaries of the trust that are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests,” in accordance with Mississippi statutory and common law. Miss. Code Ann. §§ 91-8-106; 91-8-813.

25. The Retirement Trust Trustees violated the duties listed in paragraphs 210 through 216 by failing to administer the Retirement Trust in good faith and in accordance with its terms and purpose, failing to act in the sole interest of the beneficiaries, acting in ways that harmed the interests of the beneficiaries, and by abandoning their fiduciary obligations, as specified in more detail as follows:

- A. The SRHS Board of Trustees appointed the Retirement Trust Trustees and, between 2009 and the present, also chose not to fund the Retirement Trust in accordance with the Plan and Trust’s terms. The foregoing circumstances resulted in a conflict of interest for the Retirement Trust Trustees that adversely affected their judgment in violation of Mississippi law.
- B. The Retirement Trust Trustees breached their duties of loyalty to the beneficiaries of the Trust Fund by failing and/or refusing to demand and confirm that required contributions were being made by the SRHS Defendants in accordance with the terms of the Plan and Trust.
- C. The Retirement Trust Trustees had knowledge that the Trust Fund was not being funded in accordance with the terms of the Plan and Trust, but nevertheless authorized payments from the Retirement Trust to some beneficiaries, which

depleted Trust Fund assets contrary to the purposes of the Retirement Trust and to the detriment of other beneficiaries.

- D. The Retirement Trust Trustees failed to take reasonable steps to ensure that the Retirement Trust was adequately funded in accordance with the terms and purposes of the Plan, or to ensure or verify that the SRHS Defendants made the contributions necessary to effectuate the Retirement Trust's purposes.
- E. The Retirement Trust Trustees failed to take reasonable steps to enforce the claims of the Retirement Trust against the SRHS Defendants and the SRHS Board of Trustees for failing and/or refusing to make adequate contributions in accordance with the terms of the Plan and Trust.
- F. Despite knowledge that adequate contributions were not being made by SRHS, the Retirement Trust Trustees failed to take reasonable steps to compel the SRHS Defendants to deliver Retirement Trust property nor did the Retirement Trust Trustees take reasonable steps to redress multiple breaches of trust known to them to have been committed by former Retirement Trust Trustees.
- G. Despite knowledge that beneficiaries were being provided false information concerning the Retirement Trust, the Retirement Trust Trustees failed to inform the beneficiaries that the Retirement Trust was not receiving the required employer contributions in accordance with the Plan and Trust's terms and purposes.

26. Pursuant to the foregoing, the Retirement Trust Trustees committed multiple breaches of trust, which caused Employees damages as more fully set out herein.

COUNT 7
Equitable Estoppel

27. These defendants falsely represented facts to Employees concerning the Plan and Trust, including, but not limited to, facts concerning the funding of the Plan and Trust and whether the SRHS Defendants were making the required contributions in accordance with its terms.

28. Employees were induced to commence and continue employment with the SRHS Defendants and participate in the Plan and Trust in reliance on the defendants' false representations, thus changing their positions based upon them.

29. The defendants should be estopped from terminating the Plan and Trust in its underfunded status and from denying the benefits promised under the Plan and Trust.

COUNT 8
Promissory Estoppel

30. The defendants made promises to Employees concerning the Plan and Trust, including, but not limited to, promises to fund the Plan and Trust, to make the required contributions in accordance with its terms, and to pay benefits as described by the Plan and Trust.

31. The defendants intended that these promises would be relied upon, and Employees were induced to commence and continue employment with the SRHS Defendants and participate in the Plan and Trust in reliance on the defendants' false promises.

32. Refusal to enforce the defendants' promises as described above would sanction a fraud or otherwise result in an injustice.

33. The defendants should be estopped from terminating the Plan and Trust in its underfunded status and from denying the benefits promised under the Plan and Trust.

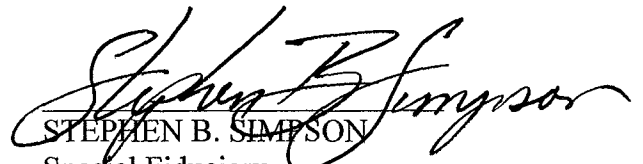
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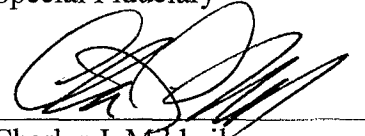
The Special Fiduciary, on behalf of the Plan and Trust and all its members, prays that judgment be entered against the defendants on all claims as follows:

1. Declaring that the Plan and Trust is a Trust within the meaning of the Mississippi Uniform Trust Code.
2. Requiring the defendants, as fiduciaries of the Plan and Trust, to make the Plan and Trust whole for any losses and disgorge any profits accumulated as a result of fiduciary breaches.
3. Requiring the defendants, as fiduciaries of the Plan and Trust, to make the Plan and Trust whole for any losses and disgorge any property or funds misappropriated as a result of fiduciary breaches.
4. Compelling the defendants to account for the amounts they should have collected and determine the total amount necessary to restore the Retirement Trust to its appropriate value.
5. Imposing a constructive trust on all cash or property held by the SRHS Defendants in an amount or value sufficient to restore the Retirement Trust to its appropriate value absent the breaches of trust.
6. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the defendants from further violating the duties, responsibilities, and obligations imposed on them by the Mississippi Uniform Trust Code, with respect to the Plan and Trust.
7. Granting some or all remedies available under Miss. Code Ann. § 91-8-1001.

8. Awarding the Special Fiduciary's attorneys' fees and expenses.
9. Awarding pre-judgment interest on any amounts awarded pursuant to law.
10. Awarding, declaring, or otherwise providing all relief under the Mississippi Uniform Trust Code, or any other applicable equitable laws that the Court deems just and proper.

Respectfully submitted, this 19th day of January, 2016.

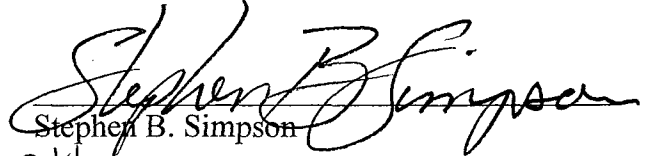

STEPHEN B. SIMPSON
Special Fiduciary

By: 
Charles J. Mikhail
His Counsel
MS Bar No. 3018

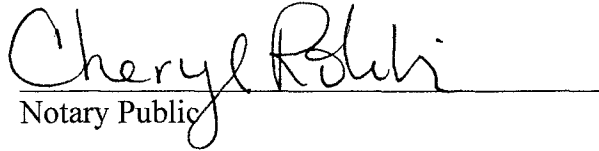
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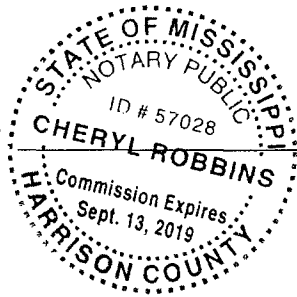
Personally appeared before me, the undersigned authority in and of the said county and state, and within my jurisdiction, the within named, **Stephen B. Simpson**, who acknowledged that he executed the above and foregoing Complaint by Special Fiduciary on the day, month and year therein mentioned.


Stephen B. Simpson

Sworn to and subscribed before me, this 19th day of January, 2016.


Cheryl Robbins
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

Undersigned counsel certifies that he has this day served, electronically, a true and correct copy of the foregoing Complaint By Special Fiduciary on all counsel of record, as follows:

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This 15th day of January, 2016.



Charles J. Mikhail