

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

STEPHEN B. SIMPSON,  
Court-Appointed Special Fiduciary  
of the Singing River Health System  
Employees' Retirement Plan and Trust,  
on Behalf of the Plan and Trust and  
all its Members

PLAINTIFF

VERSUS

SINGING RIVER HOSPITAL SYSTEM;  
SINGING RIVER HEALTH SYSTEM;  
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,  
Individually and as Members of the Board  
of Trustees;  
GARY C. "CHRIS" ANDERSON,  
STEPHANIE BARNES TAYLOR,  
MICHAEL CREWS AND PAUL GRAYSON  
"NEBO" CARTER, JR., Individually and  
as Members of the Executive Leadership Team;  
JACKSON COUNTY, MISSISSIPPI;  
JOHN McKAY, TROY ROSS, BARRY  
CUMBEST, MELTON HARRIS AND MIKE  
MANGUM, Individually and as Members of  
The Jackson County Board of Supervisors

CIVIL CAUSE NO. \_\_\_\_\_

DEFENDANTS

**COMPLAINT**  
**BY SPECIAL FIDUCIARY**

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 defendants, 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. More specifically, subject matter jurisdiction lies under the Mississippi Constitution, Article 6, Section 156, and the Mississippi Tort Claims Act, Miss. Code Ann. 11-46-1 *et seq.* The Special Fiduciary makes no claims under the Constitution, laws or treaties of the United States or federal law.

### **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.

3. These defendants may be served with process on their CEO, Kevin Holland, at 2809 Denny Ave., Pascagoula, MS 39581.

#### **Individual Defendants**

4. At some or all relevant times, the following individual defendants, Mississippi residents except as otherwise noted and who may be served with process at their last known

addresses beside their names, served on the Singing River Health System Board of Trustees and had fiduciary oversight of the Plan and Trust:

Michael J. Heidelberg, 810 Buena Vista St., Pascagoula, MS 39567  
Tommy Leonard, 14975 Big Ridge Rd., Biloxi, MS 39532  
Morris G. Strickland, 6819 Washington Ave., Ocean Springs, MS 39564 or 794 Destiny Plantation Blvd., Biloxi, MS 39532  
Ira Polk, 3530 Sherlawn Dr., Moss Point, MS 39563  
Stephen Nunenmacher, 3701 Players Cove, Gautier, MS 39533  
Hugo Quintana, 618 Rue Maupresant, Ocean Springs, MS 39564  
Allen Cronier, 13713 Bunker Hill Rd., Moss Point, MS 39562  
William Descher, 3301 Bienville Blvd., Ocean Springs, MS 39564 or 5709 Belle Fontaine Dr., Ocean Springs, MS 39564  
Joseph Vice, 21 Doctors Dr., Ocean Springs, MS 39564  
Eric Washington, 2406 Catalpa Ave., Pascagoula, MS 39567 or 3509 Montgomery Ln., Pascagoula, MS 39567  
Marva Fairley-Tanner, 706 Marden Court SE, Smyrna, GA 30082  
Martin Bydalek (a Tennessee resident), 2809 Denny Ave., Pascagoula, MS 39581

**The Executive Leadership Team Defendants**

5. 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, who may be served with process at his last known address of 600 Rue Dauphine, Ocean Springs, MS 39564.

6. 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. She may be served with process at her last known address of 2401 Olde Oak Pointe, Ocean Springs, MS 39564.

7. 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, who may be served with process at his last known address of 2916 Shell Landing, Gautier, MS 39553.

8. 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, who may be served with process at his last known address of 2615 Blackfoot Rd, Vancleave, MS 39565.

**Jackson County, Mississippi, and Members of its Board of Supervisors, Defendants**

9. Defendant Jackson County, Mississippi, may be served with process upon its counsel, William Lee Guice III, at 1000 Government St., Suite E, Ocean Springs, MS 39564.

10. John McKay may be served with process at his last known address of 124 Linnett Dr., Ocean Springs, MS 39564.

11. Troy Ross may be served with process at his last known address of 4 Schooner Lane, Ocean Springs, MS 39564.

12. Barry Cumbest may be served with process at his last known address of 3101 Lum Cumbest Rd., Moss Point, MS 39562.

13. Melton Harris may be served with process at his last known address of 3103 Boston Ave., Pascagoula, MS 39581.

14. Mike Mangum may be served with process at his last known address of 2309 Rosewood St., Pascagoula, MS 39567.

## 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**

##### **Breach of Contract Against the SRHS Defendants**

1. Members of the Plan and Trust entered into a binding contract with SRHS for the benefits defined under the Plan and Trust.
2. The SRHS Defendants inadequately funded the Plan and Trust and thereby breached the contract, proximately causing damages to the members of the Plan and Trust.

#### **COUNT 2**

##### **Negligence Against the SRHS Defendants**

3. The SRHS Defendants had a legal duty to exercise reasonable care by enacting policies to adequately fund the Plan and Trust.
4. The SRHS Defendants breached that duty by negligently enacting those policies that resulted in the inadequate funding of the Plan and Trust and reducing the value of the contractual benefits due the members of the Plan and Trust, proximately causing damages to those members.

**COUNT 3**

**Negligence and Negligent Misrepresentations Against the Executive Leadership Team, Individually and In Their Official Capacities As Officers of SRHS; And Against the Individual Defendants, Individually and As Members of the Board of Trustees of SRHS**

5. The Executive Leadership Team Defendants and Individual Defendants had a legal duty not to make false and misleading representations of material facts, and to fail to disclose material facts, to members of the Plan and Trust, relating to the financial condition of the Plan and Trust, its funding and the amount of the defined benefits payable to those members.

6. These defendants made such false and misleading representations of material facts, and failed to disclose material facts, to members of the Plan and Trust.

7. Members of the Plan and Trust justifiably, reasonably and detrimentally relied on those false and misleading representations and the failure to disclose material facts.

8. These Defendants breached their duty, proximately causing damages to members of the Plan and Trust.

9. The Individual Defendants had a legal duty to exercise reasonable care by inquiring into the financial condition of the Plan and Trust, its funding and the amount of defined benefits that were payable to members of the Plan and Trust, and into the false and misleading representations being made by the Executive Leadership Team Defendants to members of the Plan and Trust.

10. The Individual Defendants breached this duty by failing to make such inquiries, proximately causing damages to members of the Plan and Trust.

**COUNT 4**

**Negligence Against Jackson County, Mississippi, and Members of Its Board of Supervisors, Individually and In Their Official Capacity**

11. Jackson County, Mississippi, and members of its Board of Supervisors, had a statutory legal duty (a ministerial obligation), and a common law duty to exercise reasonable

care in approving SRHS's budget on an annual basis and placing such approval in the minutes of the meetings of the Board of Supervisors, and to otherwise supervise and oversee SRHS's financial operations.

12. These defendants breached those duties, which, if met, would have disclosed that the Plan and Trust was being inadequately funded and in a questionable financial condition, prompting these defendants to ensure that SRHS fully funded and otherwise met its obligations under the Plan and Trust. Additionally—

13. SRHS took out large bonds to finance much of its building and expansion plans, which bonds required these defendants to assess a millage to pay for the bonds should SRHS default on the loans; and if SRHS becomes bankrupt following ruinous judgements, Jackson County would be responsible for SRHS's debts.

14. These defendants failed to provide funding to SRHS for charitable and indigent care since 1982, forcing SRHS to incur large amounts of bad debt and to divert money needed to fund the Plan and Trust to such care in order to meet the needs of the citizens of Jackson County.

15. These defendants forced SRHS, a 501(c)(3) organization, to pay taxes to the County, money that could have been used to adequately fund the Plan and Trust.

16. These defendants abdicated and breached their duty to select members of the SRHS Board of Trustees and instead allowed SRHS to select its own trustees, including some who did not meet legal residency requirements.

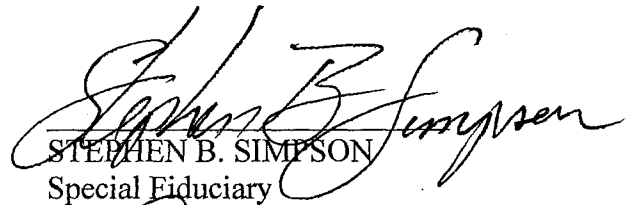
17. The breach of duties by these defendants proximately caused damages to the Plan and Trust.

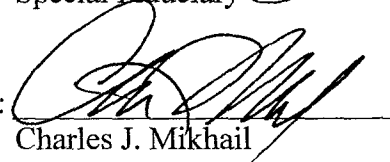
**PRAYER FOR RELIEF**

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. Awarding compensatory damages;
2. Awarding the Special Fiduciary's attorneys' fees and expenses;
3. Awarding pre-judgment and post-judgment interest on any amounts awarded pursuant to law; and
4. Awarding all other relief the Court deems just and proper.

Respectfully submitted, this 19<sup>th</sup> day of January, 2016.


  
STEPHEN B. SIMPSON  
Special Fiduciary

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

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State of Mississippi  
County of Harrison

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 19<sup>th</sup> day of January, 2016.

  
Cheryl Robbins  
Notary Public

My Commission Expires:

