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TERRY WILLEA CLERK
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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

ORDER REGARDING REMOVAL OF PLAN TRUSTEES AND
APPOINTING SPECIAL FIDUCIARY

These civil actions are before the Court on a motion for removal of trustees in the *Broun* case (Cause No. 2015-0027) and in the *Lay* case (Cause No. 2015-0060) and before the Court on their own initiative, *sua sponte*, concerning other similar civil actions pending in the Jackson County Chancery Court (as referenced herein above by Cause Nos.), in accordance with Section 91-8-706(a) of the *Mississippi Code of 1972, Annotated*, as amended. These cases concern the operations, property, assets, and funding of the Singing River Health System Employees' Retirement Plan and Trust ("Retirement Trust"). As such, the subject matter of this litigation addresses trust property, as defined and recognized under section 91-8-103(20) of the *Mississippi Code of 1972, Annotated*, as amended. Jurisdiction and venue are proper in this court. *Miss. Code Ann.* §§ 91-8-202, 91-8-203 and 91-8-204. This Court therefore assumes its role herein, in



accordance with *Miss. Code Ann.* §91-8-201, regarding the statutory duty in administration of the subject trust.

In or about 1983, the Singing River Health System originally created and designed the subject retirement trust. This benefit pension plan covers its full-time employees hired before October 1, 2011. Under the terms of the plan, Singing River Health System is designated as the “Employer” and “Plan Administrator” of the pension plan. §1.15 and §10.01.¹ The plan likewise dictates that a Board of Trustees will govern the funding and viability of the plan. §10.02. Furthermore, the plan provides that a “Member” is “an Employee who becomes a Member ... and ... continues to be entitled to any benefits under the Plan.” §1.19. The overall purpose of the Plan allows Members to defer income until or after the termination of their employment with Singing River Health System and provides retirement income to such Members.

The Trustees of the Plan have the responsibility for determining the amount of contributions to be made by Singing River Health System and for making the contributions necessary to provide benefits described under the Plan. §§10.02 and 10.03. Indeed, the Plan vests the exclusive responsibility and powers necessary to perform the following duties and functions with such Trustees:

- (a) To receive, hold, preserve, manage, and at the direction of the Plan Administrator, invest and reinvest 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;

¹ All such references are to provisions or sections in the subject retirement pension plan.

(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.

§15.01(a), (b) and (c). In performing these duties, Trustees are charged with “doing 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.” §15.02.

As alleged by the plaintiffs and as admitted by Singing River Health Systems, no contributions to the Plan have been made since 2009. While Singing River Health Systems contends that any contributions to the Plan are discretionary, the Plan language specifically states as follows:

{Singing River Health System} *shall* make such contributions from time to time, which in addition to contributions made by members pursuant to section 9.02 shall be necessary as determined by the Actuary to provide the benefits of this Plan.

§9.03

This case is governed by the terms and provisions of the *Mississippi Uniform Trust Code*. Section 91-8-706 of that statutory body provides that a court may remove a trustee for several reasons. Those reasons are that “[1] [t]here has been a substantial change of circumstances, [2] the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and [3] a suitable cotrustee or successor trustee is available.” Section 91-8-706(c) also provides that “[p]ending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 91-8-1001 (b) as may be necessary to protect the trust property or the interests of the beneficiaries.”

Among the remedies, provided under Section 91-8-1001, is the authority for a court to "appoint a special fiduciary to take possession of the trust property and administer the trust." *Miss. Code Ann.* §91-8-1001(b)(5). Furthermore, a court is empowered to "[o]rder any other appropriate relief whether provided elsewhere in this chapter, available at common law or under equity principles." *Miss. Code Ann.* §91-8-1001(b)(10).

While the parties dispute whether contributions are required to be made to the plan, it is clear from the documents submitted thus far to the court that substantial losses to the plan investments, and therefore the trust property, have occurred. Whether these losses are attributable to actions or inactions on the part of the current plan trustees is also a matter of dispute. Moreover, the amount of losses and the amount of contributions not made to the plan are the subject of numerous motions and discovery matters currently pending before the court. Nevertheless, as authorized by Sections 91-8-706 and 91-8-1001, this court has the statutory and equitable authority to (a) determine that a "substantial change of circumstances" has occurred, (b) find that the removal of the trustees best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and (c) a suitable cotrustee or successor trustee, or, as set forth in Section 91-8-1001(b)(10), a special fiduciary, is available.

Therefore, considering the above and foregoing factors, as well as the claims and defenses asserted by the parties in these cases, the court determines that, pending a final decision on a request to remove the trustee, the following interim decision is made, in accordance with Section 91-8-706 and Section 91-8-1001 (b):

1. The court hereby appoints Stephen B. Simpson, as a Special Fiduciary to take possession of the trust property and to administer the trust, including all plan assets and property,

as defined and contemplated under the *Mississippi Uniform Trust Code, Miss. Code Ann. §§91-8-101, et seq.*;

2. The current trustees of the Retirement Trust are ordered and compelled to account and turn over to the Special Fiduciary all trust assets and property; however, the current trustees are hereby ordered and compelled to continue benefit payments to current retirees under the Retirement Trust and Plan, as directed by the Special Fiduciary or order of this Court;

3. The current trustees of the Retirement Trust are enjoined from taking any action concerning the trust property and assets or otherwise administering the trust without the expressed written approval of the Special Fiduciary appointed herein;

4. The aforesaid Special Fiduciary appointed herein is granted all power and authority prescribed by the Singing River Health System Employees' Retirement Plan and Trust;

5. The aforesaid Special Fiduciary appointed herein is likewise granted all power and authority set forth under the *Mississippi Uniform Trust Code*; and

6. The aforesaid Special Fiduciary shall be paid by Singing River Health Systems from non-Trust funds or property, at an hourly rate of \$250.00, plus all reasonable and necessary costs and expenses which the Special Fiduciary may incur in the performance of the aforesaid duties, power and authority.

7. The aforesaid Special Fiduciary may be appointed Trustee of the Retirement Trust in the event of the resignation of the current trustees.

8. The aforesaid Special Fiduciary shall have the right to retain outside counsel to further and protect the assets and interests of the Pension Plan.

9. Honorable Terry Miller shall remain Receiver for Limited Purposes pursuant to the Order of this Court dated June 8, 2015. Mr. Miller shall be compensated for his work beginning when he leaves office from the Trust funds at an hourly rate of \$150.00 per hour.

IT IS, THEREFORE, ORDERED, that Stephen B. Simpson is hereby appointed as the Special Fiduciary of the Singing River Health System Employees' Retirement Plan and Trust.

IT IS, FURTHER, ORDERED, that the current trustees of the Singing River Retirement Health System Employees' Retirement Plan and Trust shall comply with the above terms and provisions as ordered herein, pending resignation or removal.

IT IS, FINALLY, ORDERED that this interim order, pending a final decision, shall remain in full force and effect until further order of this court.

SO ORDERED, this the 29th day of September, 2015.


SPECIAL CHANCERY COURT JUDGE