

FILED

DEC 08 2014

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

CYNTHIA N. ALMOND

By *[Signature]*
PLAINTIFF

VERSUS

CAUSE NO.2014-2653-NH

SINGING RIVER HEALTH SYSTEM, A/K/A SINGING RIVER HOSPITAL SYSTEM

DEFENDANTS

SINGING RIVER HOSPITAL SYSTEM FOUNDATION, INC;
SINGING RIVER HEALTH SYSTEM FOUNDATION, INC.;
SINGING RIVER HEALTH SERVICES FOUNDATION;
SINGING RIVER HOSPITAL SYSTEM EMPLOYEE BENEFIT FUND, INC.; TRANSAMERICA RETIREMENT SOLUTIONS CORPORATION; JOHN DOE ACTUARIES A, B, OR C; and JOHN DOE ACCOUNTING FIRM A, B, OR C
MICHAEL HEIDELBERG, Individually and as a Member of the Board of Trustees,
MICHAEL TOLLESON, Individually and as a Member of the Board of Trustees,
ALLEN CRONIER, Individually and as a Member of the Board of Trustees,
TOMMY LEONARD, Individually and as a Member of the Board of Trustees,
LAWRENCE COSPER, Individually and as a Member of the Board of Trustees,
MORRIS STRICKLAND, Individually and as a Member of the Board of Trustees,
IRA POLK, Individually and as a Member of the Board of Trustees,
STEPHEN NUNENMACHER, M.D., Individually and as a Member of the Board of Trustees, HUGO QUINTANA, M.D., Individually and as a Member of the Board of Trustees, and KEVIN HOLLAND, Individually and in his Official Capacity

AMENDED COMPLAINT

COMES NOW, CYNTHIA N. ALMOND, by and through her attorneys, DENHAM LAW FIRM, PLLC, and BARTON LAW FIRM, PLLC, and files this Complaint against the Defendants, SINGING RIVER HEALTH SYSTEM, a/k/a SINGING RIVER HOSPITAL SYSTEM, a community based hospital organized pursuant to MS Code 41-13-10, SINGING RIVER HOSPITAL SYSTEM FOUNDATION, INC; SINGING RIVER HEALTH SYSTEM FOUNDATION, INC., SINGING RIVER HEALTH SERVICES FOUNDATION; SINGING RIVER HOSPITAL SYSTEM EMPLOYEE BENEFIT FUND, INC.; TRANSAMERICA RETIRMENT SOLUTIONS CORPORATION; JOHN DOE ACTUARIES A, B, or C, JOHN

DOE ACCOUNTING FIRM A, B, or C, MICHAEL HEIDELBERG, Individually and as a Member of the Board of Trustees, MICHAEL TOLLESON, Individually and as a Member of the Board of Trustees, ALLEN CRONIER, Individually and as a Member of the Board of Trustees, TOMMY LEONARD, Individually and as a Member of the Board of Trustees, LAWRENCE COSPER, Individually and as a Member of the Board of Trustees, MORRIS STRICKLAND, Individually and as a Member of the Board of Trustees, IRA POLK, Individually and as a Member of the Board of Trustees, STEPHEN NUNENMACHER, M.D., Individually and as a Member of the Board of Trustees, and HUGO QUINTANA, M.D., Individually and as a Member of the Board of Trustees and for cause would respectfully show as follows:

1. Plaintiff, CYNTHIA N. ALMOND, is an adult resident citizen of Jackson County, Mississippi.
2. Singing River Health System is a community hospital organized pursuant to Miss. Code 41-13-10 (Rev.2009).
3. Defendant, SINGING RIVER HEALTH SYSTEM, referred to as SINGING RIVER HOSPITAL SYSTEM also the Defendant, Kevin Holland in his individual and official capacity with any of the named entities, upon information and belief, runs a public hospital located in Jackson County Mississippi. No notice is required to any Defendant hereunder, under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its CEO, Kevin Holland at 2012 Highway 90 Gautier, MS 39553, or 816 Harbor Drive, Pascagoula, MS 39567-7225 or upon any other person qualified to receive process in this matter.

4. Defendant, SINGING RIVER HEALTH SYSTEM FOUNDATION, also referred to as SINGING RIVER HOSPITAL SYSTEM, upon information and belief, runs a public hospital located in Jackson County Mississippi. No notice is required to any Defendant hereunder, under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its Registered Agent for service of process, Roy C. Williams at 711 Delmas Avenue, Pascagoula, MS 39567 or 816 Harbor Drive, Pascagoula, MS 39567-7225 or upon any other person qualified to receive process in this matter.

5. Defendant, SINGING RIVER HEALTH SYSTEM FOUNDATION, INC. sometimes referred to as SINGING RIVER HOSPITAL SYSTEM, upon information and belief, runs a public hospital located in Jackson County, Mississippi. No notice is required to any Defendant under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its Registered Agent for service of process, Roy C. Williams at 711 Delmas Avenue, Pascagoula, MS 39567 or 816 Harbor Drive, Pascagoula, MS 39567-7225 or upon any other person qualified to receive process in this matter.

6. Defendant, SINGING RIVER HEALTH SERVICES FOUNDATION, called SINGING RIVER HOSPITAL SYSTEM, upon information and belief, participates in operating a public hospital located in Jackson County Mississippi. No notice is required to this Defendant under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its Registered Agent for service of process, Roy C. Williams at 711 Delmas Avenue, Pascagoula, MS 39567 or 816 Harbor Drive, Pascagoula, MS 39567-7225 or upon any other person qualified to receive process in this matter.

7. Defendant, SINGING RIVER HOSPITAL SYSTEM EMPLOYEE BENEFIT FUND, INC., upon information and belief, manages or participates in managing the retirement

plans of employees of Singing River Hospital System, a public hospital located in Jackson County, Mississippi. No notice is required to this Defendant under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its Registered Agent for service of process, Roy C. Williams at 711 Delmas Avenue, Pascagoula, MS 39567 or 816 Harbor Drive, Pascagoula, MS 39567-7225 or upon any other person qualified to receive process in this matter.

8. Defendant, TRANSAMERICA RETIREMENT SOLUTIONS CORPORATION, and its subsidiaries, the names of which will be added to Complaint upon discovery of same, acted as actuary for Singing River Hospital System Employees' Retirement Plan. No notice is required to this Defendant under the State Tort Claims Act as no tort damages are requested herein. The Defendant may be served by process upon its Registered Agent for service of process, C.T. Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232 or upon any other person qualified to receive process in this matter.

9. Defendant, John Doe Accounting Firm, and its subsidiaries, the names of which will be added to Complaint upon discovery of same, provided accounting services for Singing River Hospital System Employees' Retirement Plan. No notice is required to this Defendant under the State Tort Claims Act as no tort damages are requested herein.

10. Defendants, John Does B-Z, the names of which will be added to Complaint upon discovery of same, are individuals or entities currently unknown to Plaintiff, but who have information vital to discovery and accounting in the matter.

11. This Court has jurisdiction of the parties and of the subject matter, all of which

Defendants, upon information and belief, have participated in the planning, funding, and management of the Plaintiff's retirement funds earned through her employment at Singing River Hospital System.

12. The Defendants employed the Plaintiff commencing on or about April 21, 1991, at its hospital facility in Jackson County Mississippi until September 20, 2007, and as an incentive to her employment and condition thereof she was required, as were the Defendants, to make payments into an investment account to fund the Plaintiff's eventual retirement.

13. The Plaintiff has faithfully carried out the requirements of her employment agreement and of the Defendants and paid her full share into the mandated defined benefit pension plan administered by the Defendants. The Defendants, or some of them acting in concert, without notice to the Plaintiff, until she received attached Exhibit "A," began to diminish the mandated and contracted for matching payments into her retirement account and eventually stopped altogether paying the matching payments, which were required to be paid under contract and by law, all the while deceiving the Plaintiff and her fellow employees into believing that such payments were being made and into continuing their own employee payments when in fact, for years, the Defendants' matching portion went entirely unfunded by the Defendants and the money which ought to have gone to the Plaintiff's retirement went to others of the Defendants or to third parties who are currently unknown to Plaintiff.

14. The latest version of the Plan only (upon information and belief) is attached as Exhibit "A". Section 11.04(c) of said Benefits Plan at page 102 entitled "Procedures if Funds Insufficient to Provide Full Benefits" provides that upon termination of the plan the assets shall be converted to cash. Such cash shall first be applied to the amount of costs and change specified in Section 11.04(b)(1) i.e. all charges and costs including those of Counsel, the Trustee,

and the Actuary. Discovery is sought as to the identities of said Counsel, Trustees, or Actuaries, so they may be joined as parties, and an injunction is necessary against all unknown John Does whether Counsel, Trustees or Actuaries to prevent waste of the employees' assets and enjoin them from a continuing conspiracy to terminate the plans for a lack of sufficient funding, due in large part to the failure to perform their fiduciary duties under the plan to the current lack of funds.

15. The Plaintiff is seeking injunctive relief under Rule 65(b) and seeks a temporary restraining order and/or permanent injunction based on the following:

- (a) The Plaintiff has filed a verified Complaint and Affidavit (attached hereto as Exhibit "B") whereby the Plaintiff and others similarly situated will suffer immediate and irreparable damage if the Defendants are allowed to terminate the Plan as written. The Plaintiff has just reason to fear that she may be left without a remedy if the Plan is allowed to be terminated, which will result in a permanent extinguishment of all funds not paid into the Plan by the Employer.
- (b) Plaintiff believes the Defendants are well on their way to a termination event which will conclusively affect not only the Plaintiff, but thousands of employees similarly situated. Specific reference is made to Section 9.03 of the Plan (a copy of which is attached hereto as Exhibit "A") whereby the Defendant and/or its agents' will be absolved from any responsibility from their collective failure to make employer contributions as required under the plan.
- (c) Notice is unable to be given to the Defendant prior to this Temporary Restraining Order, as there is a race by the Defendants to achieve their end result. Notice should

not be required because such notice may result in the immediate termination of the Plan to the detriment and irreparable harm to all beneficiaries of said Plan.

(d) Plaintiff therefore seeks this temporary restraining order to prohibit the termination of the Plan until such time as a hearing on the merits can be heard, and at which time a permanent injunction will be sought.

16. There is a real danger that some of the Defendants or their agents will alter, amend, or destroy records or computer entries vital to this case. There is great need for an accounting to Plaintiff by the Defendant and for the Plaintiff to also receive verifying records of any accounting obtained by the Defendants or any third party acting on their behalf, and to discover where her money went and the events leading up to the complained of behavior of the Defendants as well as all parties involved. Plaintiff should be allowed to obtain accounting records of the Defendants and each of them for the last ten years

17. The Plaintiff seeks documented information as to where the money has come from through the years to fund the employee retirement plans, the books of any such entity involved in holding or distributing funds of or designated for such retirement plans or in funding the Hospital's portion of said plan, and any and all books and records that would show why the payments dried up and ceased and where the money went.

18. In Court in Lucedale, MS on December 8, 2014, Roy C. Williams, Esq., an attorney revealed that the Board of Trustees which administers the Retirement Plan of the employees of the hospital, the Singing River Health System Employees' Retirement Plan, had voted to terminate the said retirement plan on November 29, 2014, but the minutes had not yet been signed. They may be signed at any moment, and likely will be. Upon information and belief, said trustees who must sign off on said minutes allegedly terminating the retirement plan

are the following: Michael Heidelberg, Michael Tolleson, Allen Cronier, Tommy Leonard, Lawrence Cospier, Morris Strickland, Ira Polk, Stephen Nunemacher, M.D., and Hugo Quintana, M.D., and that the CEP of the said defendant hospital, Kevin Holland, must also sign the alleged minutes.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff seeks an accounting of and from all Defendants concerning payments paid and not paid in to her mandated defined benefit pension plan administered by the Defendants or others during the course of her employment. Plaintiff further seeks by way of discovery, to examine the books, minutes, and records of all Defendants, including but not limited to those listed and those which may be added, and of the Board of Trustees of Singing River Hospital System to determine why the matching payments were not made and where the matching money went in order to determine whether or not a tort claim or claim for breach of contract or breach of fiduciary duty, fraud, or other action exists and against whom, precisely.

PLAINTIFF FURTHER seeks documented information as to where the money has come from through the years to fund the employee retirement plans, the books of all types of any such entity involved directly or indirectly in such retirement plans or in funding the Singing River Hospital portion of said plan, and any and all minutes, books, and records that might contain information as to why the payments dried up and ceased, and where all the money went.

PLAINTIFF FURTHER PRAYS that the filing of this suit serves as notice to the Defendants, Hospital, its Officers, its Agents, Contactors, Affiliates and Attorneys, that under no circumstances should any records of the Hospital or any other party which in any way relate to income and expenditures be in any way altered or destroyed or concealed. To do so would constitute expoliation of evidence.


PLAINTIFF FURTHER PRAYS for injunctive relief under Rule 65(b) and seeks a temporary restraining order and/or permanent injunction based on the following:

- (a) Notice is unable to be given to the Defendant prior to this Temporary Restraining Order, as there is a race by the Defendants to achieve their end result. Notice should not be required because such notice may result in the immediate termination of the Plan to the detriment and irreparable harm to all beneficiaries of said Plan;
- (b) Plaintiff therefore seeks this temporary restraining order to prohibit the termination of the Plan or the signing of any minutes or documents perpetuating to do so until such time as a hearing on the merits can be heard, and at which time a permanent injunction will be sought; and
- (c) The said individuals listed in paragraph sixteen (16) above as well as Singing River Health System and its agents should be enjoined in their individual and official capacities from signing any further documents relating to the Singing River Health System Employees' Retirement Plan until further order of the Court.

PLAINTIFF FURTHER seeks such equitable orders from this court as may be necessary to carry out her request contained in her prayer and for such other and further relief which the Court may deem appropriate.

RESPECTFULLY SUBMITTED on this the 8th day of December, 2014.

CYNTHIA N. ALMOND
BY: DENHAM LAW FIRM, PLLC
& BARTON LAW FIRM, PLLC

BY: 
CYNTHIA N. ALMOND
Plaintiff

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

CYNTHIA N. ALMOND

PLAINTIFF

VERSUS

CAUSE NO.2014-2653-NH

SINGING RIVER HEALTH SYSTEM, A/K/A SINGING RIVER
HOSPITAL SYSTEM

DEFENDANTS

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SINGING RIVER HEALTH SYSTEM FOUNDATION, INC.;
SINGING RIVER HEALTH SERVICES FOUNDATION;
SINGING RIVER HOSPITAL SYSTEM EMPLOYEE
BENEFIT FUND, INC.; TRANSAMERICA RETIREMENT
SOLUTIONS CORPORATION; JOHN DOE ACTUARIES
A, B, OR C; and JOHN DOE ACCOUNTING FIRM A, B, OR C
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Trustees, HUGO QUINTANA, M.D., Individually and as a Member of the Board of
Trustees, and KEVIN HOLLAND, Individually and in his Official Capacity

AFFIDAVIT OF CYNTHIA N. ALMOND

STATE OF MISSISSIPPI
COUNTY OF JACKSON

I, CYNTHIA N. ALMOND, after first being duly sworn, do depose and state on my oath
the following:

1. I, CYNTHIA N. ALMOND, have personal knowledge of the following facts or
events.

2. I, CYNTHIA N. ALMOND, reside at 13200 Three Oaks Drive, Moss Point,
Mississippi and am a resident of Jackson County, Mississippi. I am a former employee of
Singing River Health System, and (except for a short hiatus spent at Mobile Infirmery from

March 1997, to February 1998) ran the Vascular Laboratory from 1991, until September 2008, when I retired.

3. At no time did I have a written employment contract, however, I was told at new employee orientation upon initially being hired that I must contribute a mandatory three percent (3%) of my earnings into the Singing River Health System Employee Retirement Plan, and that Singing River Health System would be required to make their required matching contribution into the Employees' Retirement Plan. My employment was conditioned on my participation in the Singing River Health System Employees' Retirement Plan.

4. Upon information and belief, the employee retirement plan is now insolvent, and Singing River Health System has not made a contribution since approximately 2009, and that the company is in the process of terminating the plan pursuant to section 9.03 of the Singing River Health System Employees' Retirement Plan and Trust Agreement. Roy C. Williams, Esquire, an attorney for the hospital announced on December 8, 2014, in the Chancery Court in Lucedale, Mississippi, that the plan had already been terminated by a meeting held November 29, 2014, but the minutes had not yet been signed.

5. Termination of this plan will leave me, CYNTHIA N. ALMOND, and all others similarly situated without remedy and will do me irreparable harm.

6. I am seeking a temporary restraining order to prevent the termination of the Singing River Health System Employees' Retirement Plan until a plan is put into place for me, CYNTHIA N. ALMOND, and those that are similarly situated.

Further Affiant sayeth not.


CYNTHIA N. ALMOND