

**IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI**

CYNTHIA N. ALMOND,

Plaintiff,

v.

SINGING RIVER HEALTH SYSTEM, a/k/a  
SINGING RIVER HOSPITAL SYSTEM, *et*  
*al.*

Defendants.

Civil Action: 2014-2653JB

**THE SRHS DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR SANCTIONS**

Defendants Singing River Health System ("SRHS"), Singing River Hospital System, Singing River Hospital System Foundation, Inc.; Singing River Health Services Foundation; Singing River Hospital System Employee Benefit Fund, Inc.; Michael Heidelberg; Allen Cronier; Tommy Leonard; Lawrence Cosper; Ira Polk; and Kevin Holland (collectively, "the SRHS Defendants") hereby move for sanctions against Plaintiff Cynthia Almond's ("Almond") counsel, Earl Denham and Harvey Barton, pursuant to Mississippi Rule of Civil Procedure 11, the Litigation Accountability Act, and this Court's inherent authority. In support of this Motion, the SRHS Defendants incorporate by reference their Opposition to Plaintiff's Motion for Leave to Amend Complaint, and further state as follows:

**I. INTRODUCTION**

Almond's counsel persisted in seeking leave to amend her complaint, despite knowing core allegations in the proposed Amended Complaint are false. Almond's counsel admittedly had months to investigate those allegations, yet insisted on pushing forward without any reasonable

ground to support the factual allegations pled. These actions are simply inexcusable and merit sanctions under Mississippi Rule of Civil Procedure 11 and/or the Litigation Accountability Act.

Almond's proposed Amended Complaint is the proverbial "shot in the dark." The allegations in the Complaint are based on pure speculation and conjecture, and are thus, improper from a pleading standpoint - but are also grossly inaccurate as a factual matter. The allegations are so devoid of any factual support, they constitute non-privileged, libelous accusations. Almond named certain persons who did not even work for SRHS when they allegedly took certain actions, in an attempt to harass an already struggling health system. The SRHS Defendants have opposed the Motion to Amend. As explained in their Opposition to the Motion to Amend, each claim Almond seeks to assert against the SRHS Defendants and other proposed defendants is futile. Almond's attempt to delay resolution of this suit by filing meritless claims warrant sanctions against her attorneys under Mississippi Rule of Civil Procedure 11 and/or the Litigation Accountability Act.

## **II. FACTUAL BACKGROUND**

On December 8, 2015<sup>1</sup>, Almond filed her original Complaint against the SRHS Defendants, and others, seeking a Temporary Restraining Order ("TRO") and accounting of the Singing River Health System Employees' Retirement Plan ("the Plan"). On May 12 and May 13, 2015, this Court held hearings to address all pending Motions. During those hearings, based in large-part on the allegations in Almond's then-pending Complaint, the Court found that because this suit was brought to achieve an accounting, the Court entered rulings to facilitate the expeditious resolution of that accounting, including appointment of a receiver to monitor the pension plan trust,

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<sup>1</sup> Almond actually filed her first complaint on December 5, 2014, however, she never served this Complaint on any SRHS Defendant. Thus, the First Amended Complaint filed on December 8, 2014, is the first Complaint to which the SRHS Defendants were forced to respond to.

appointment of a Special Master to facilitate the accounting, and entry of a Scheduling Order to facilitate the discovery necessary to achieve the accounting. (Exhibit A, May 12, 2015 Hearing Transcript at 13).

During the second day of the hearing, Earl Denham, Almond's counsel, informed the Court of its intention to amend the Complaint to add new parties. (Exhibit A, May 13, 2015 Hearing Transcript at 32:18-22). Mr. Denham assured the Court that the amended pleading would only add new parties. He did not mention that it would add six entirely new claims. (*Id.*) Mr. Denham assured the Court the proposed amendment "won't in any way affect discovery in this matter [...]" (*Id.* at 33:6-9).

On May 13, 2015, Almond filed a Motion for Leave to file another amended complaint. Contrary to Mr. Denham's representations to the Court only hours before, the proposed Amended Complaint didn't just add new parties - it more than doubled the number of defendants, adding 14 defendants to bring the total number of defendants to 25. Likewise, it went far beyond simply adding parties. It added six new claims, all of which are insufficiently plead under the Mississippi Rules of Civil Procedure, and therefore are immediately subject to dismissal under Mississippi Rule of Civil Procedure 12(b)(6).

Almond's counsel's conduct in seeking to amend her Complaint to add only frivolous claims merits sanctions under Mississippi Rule of Civil Procedure 11 and the Litigation Accountability Act. Almond's counsel committed sanctionable conduct in that they sought leave to file an Amended Complaint they knew did not have factual support. Likewise, they presented the pleading for an improper purpose. They were aware at the time of filing that their claims were frivolous and their only purpose in making the filing was to harass the SRHS Defendants and the proposed defendants. Almond's counsel's conduct unnecessarily prolonged these proceedings and

increased the expenses incurred by all other parties and the judicial resources expended by the Court.

The SRHS Defendants do not bring this Motion lightly; however, the unusual circumstances created by Almond's counsel's decision to amend the Complaint with false allegations in an effort to needlessly expand and delay this litigation are extraordinary and have impaired the just, speedy, and inexpensive determination of this action that the Chancery Court seeks to secure. This conduct should not be taken lightly as attorneys are required to conduct diligence into the support behind their claims- especially when asserting such serious charges as fraud and racketeering. Almond's counsel's should be admonished and sanctioned for this reckless pleading.

### III. ARGUMENT

#### A. **Rule 11 Sanctions are warranted against Almond's counsel because they affirmatively alleged facts without any reasonable basis and for an improper purpose**

Mississippi Rule of Civil Procedure 11(a) requires that all pleadings be signed by an attorney constituting certification that "the attorney has read the pleading or motion; that to the best of the attorney's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

If an attorney signs a pleading or motion in contravention of Rule 11(a), the pleading may be stricken as a sham and false and the action may proceed as though the pleading or motion had not been served." Miss. R. Civ. P. 11(b). When violations of Rule 11 are willful, the offending attorney will be subject to appropriate disciplinary action. *Id.* Likewise, an attorney may be disciplined by the Court where they attempt to insert scandalous or indecent matters into pleadings. *Id.* If any party files a motion or pleading that is frivolous or filed for the purpose of harassment

or delay, the court may order the filing attorney to pay the opposing party's reasonable expenses expended in opposing the filing, including reasonable attorneys' fees. *Id.*

Almond's counsel's conduct in this litigation violates Rule 11. At its core, Rule 11 is designed to avoid frivolous filings. "Frivolous filings impose substantial and unnecessary costs upon both litigants and the courts, and ultimately upon the public." *Tricon Metals & Servs., Inc. v. Topp*, 537 So. 2d 1331, 1335 (Miss. 1989). Thus, "Rule 11 must be read and interpreted in light of the purpose implicit in it: one of general deterrence of frivolous filings. Common sense informs us that we may not eliminate the frivolous filing nor its costs. The goal of Rule 11 enforcement is to holding the social cost of frivolous filings to an optimally efficient level." *Id.*

Almond's proposed Amended Complaint can only be described as frivolous. As set forth in the Opposition to the Motion to Amend, which is incorporated by reference as if set forth fully, herein, each of the six claims she seeks to add to this case are subject to immediate dismissal.

The frivolous nature of the proposed Amended Complaint is particularly evident when considering Almond's claims against proposed defendant Lee Bond. Bond, SRHS' current CFO, is lumped into several very serious claims for fraud, conspiracy and racketeering, without even one allegation of fact justifying his inclusion in this case. Giving new meaning to the adage "no good deed goes unpunished," since taking over as CFO, Bond has endeavored tirelessly to be transparent, collaborative and a part of the pension solution. You would never know this from the proposed Amended Complaint though, which (incorrectly) alleges Bond: decided not to fund the pension in 2009 (Proposed Amended Complaint ("PAC") ¶ 30), met with bond holders regarding the pension plan (PAC ¶ 33), terminated the pension plan (PAC ¶ 64), and failed to force third-parties to utilize generally accepted accounting and auditing standards (PAC ¶ 64).

Had Almond's counsel done some modicum of diligence (even as basic as an Internet search), they would know that Bond did not join SRHS until March 2013, and did not become CFO at SRHS until approximately March 2014. Thus, Bond could not have been involved in the auditors using alleged improper accounting principles (years before he arrived), or when the (unspecified) parties hatched the alleged conspiracy to not fund the pension plan in 2009. Rather than wait to amend the Complaint until discovery shows Bond (or others) had any involvement in the events leading up to the pension underfunding, Almond's counsel make wild and far-sweeping accusations before they has any factual support for the same.

This is not a case where plaintiff had a reasonable basis for pursuing a claim, but required discovery to flush out the facts. In this case, Almond's counsel wanted to start a fishing expedition without any basis for casting a line. This, after Almond's counsel stated they had been investigating the facts of this case for months. (Exhibit A, May 13, 2015 Hearing Transcript at 33:10-23) (noting that additional parties should have been asserted at the outset of the suit, in December) (Exhibit B, Collection of Public Statements from Almond's Counsel). As set forth in the contemporaneously-filed Opposition to the Motion to Amend, not only does this conduct run afoul of Mississippi's pleading requirements, in this circumstance, it is also sanctionable.

The allegations in the proposed Amended Complaint demonstrate counsel failed to conduct a reasonable investigation prior to seeking leave to amend the Complaint. This is expressly contrary to Mississippi law and counsel should be sanctioned for it. *See Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 494 (Miss. 2004) (“[c]omplaints should not be filed in matters where plaintiffs intend to find out in discovery whether or not, and against whom, they have a cause of action.”).

**B. Almond's Motion to Amend was filed for an improper purpose and is also sanctionable on that basis.**

Even if the Court determines that Almond's filing was not frivolous, it can nonetheless award sanctions if it believes the filing was done for an improper purpose such as harassment or delay. *Nationwide Mut. Ins. Co. v. Evans*, 553 So. 2d 1117, 1120 (Miss. 1989). Given that Almond's proposed Amended Complaint sets forth no basis for relief, it was obviously filed for only one purpose: to harass the SRHS Defendants and proposed defendants. "A motion or pleading is filed for the purpose of harassment or delay when the party does not have a viable claim." *In re Spencer*, 985 So. 2d 330, 339 (Miss. 2008). It is evident from the recent social media comments by Almond's counsel that this reckless pleading was filed to incite hatred against SRHS..

The particular facts of this case, further drive this point home. On May 12 and 13, 2015, during a hearing on this matter, the Court indicated its desire that the parties immediately begin discovery that would allow the Court to complete an accounting of the pension plan trust. During that discussion, Almond's counsel was present as SRHS agreed to produce significant documents in an expedited manner. After that discussion, Almond's counsel represented to the Court that its proposed amendment would only add new parties and would not affect those expedited discovery deadlines. That representation was patently false. Almond's proposed Amended Complaint named, among other parties, SRHS' counsel. That action has necessitated SRHS' hiring of new local counsel simply to file the opposition to this frivolous Motion to Amend. Additionally, the deadline for responding to Almond's proposed frivolous claims was the same discovery deadline agreed to, and ordered by the Court. Almond's counsel allegedly researched and investigated her new claims for months, and held on to those frivolous claims until the timing of the filing would hurt SRHS the most: when it was under significant time constraints to complete discovery. Quite simply, Almond's counsel misled the Court during that hearing- promising that this Amended

Complaint would not affect the case scheduling, but with the addition of 14 new parties it cannot help but greatly change the landscape and timing of the case.

Even worse, Almond's counsel's actions have negatively affected all parties in all consolidated cases. All counsel except for Almond's counsel recently agreed to complete the discovery into the accounting of the pension plan by November 15, 2015. (Exhibit C, Proposed Scheduling Order). This is an ambitious timeline. Almond's unilateral addition of 14 new parties and six frivolous claims almost ensures that deadline will not be met. The new parties will not likely be served until June. At best, they will answer and appear in July. This leaves these parties less than three months to complete accounting discovery. And, the newly added parties are currently under no obligation to produce documents on the ambitious schedule to which SRHS agreed.<sup>2</sup>

Additionally, the Court encouraged the parties to quickly select a Special Master to assist in this accounting process. The addition of these new parties will undeniably slow-down the selection of the Special Master, because the parties will have to wait until the new parties appear in the case in order to select the Special Master. Otherwise, the newly-added parties may have sufficient grounds to object to the Special Master's appointment, particularly if the Special Master has an apparent conflict of interest with a newly-added party affecting impropriety.

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<sup>2</sup> Further evidence of Almond's counsels' egregious litigation conduct can be found in their outright refusal to agree to any confidentiality order governing the case. Nearly every other attorney involved in these Chancery Court cases agreed to support entry of a modest confidentiality order. After explaining that SRHS' document production will include former and current employee salary and benefit information, personal and family insurance details and even social security numbers, Almond's counsel still refused to protect that information from public disclosure, demanding those documents be produced without any confidentiality. This too is reckless conduct, as neither Mr. Barton or Denham have the permission of thousands of employees to waive their personal privacy rights. SRHS wants to produce all relevant documents, but at the same time protect its employees from identity theft and other issues that arise from disclosing social security numbers and personal information. SRHS respectfully requests the Court instruct Messrs. Barton and Denham to cooperate with all other counsel to move this case along.



In one-fell swoop, Almond's counsel set this case back several months with no purpose other than to add frivolous claims. They derailed the positive momentum gained during the May 12-13, 2015 hearing for no reason other than to generate publicity and to harm SRHS.

**C. Sanctions are warranted under the Litigation Accountability Act**

A separate and independent basis for sanctions exists pursuant to the Litigation Accountability Act of 1988, Mississippi Code Ann. Section 11-55-5(1), which provides if a trial court "finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interposed for delay or harassment....," the Court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs. *Meredith v. Meredith*, 987 So. 2d 477, 482 (Miss. Ct. App. 2008) (finding the chancery court did not abuse its discretion in determining that the suit was frivolous and without substantial justification and did not err in awarding attorneys' fees and expenses in connection with the case). "Without substantial justification" means the claim is "frivolous, groundless in fact or law, or vexatious [...]" Miss. Code Ann. 11-55-3(a).

Almond's counsel engaged in unreasonable and vexatious conduct when they engaged in sandbagging by asking to amend their Complaint in a frivolous manner. By adding false and unsupported allegations and claims to the Amended Complaint, Almond's counsel unnecessarily multiplied the proceedings in this case - compelling SRHS to Oppose the Motion for Leave to Amend, increasing the costs of defense, keeping the case on the Court's docket for longer than otherwise necessary, and requiring the Court to address false facts and claims. This is particularly harmful in this case, given the Court has just determined the parties should quickly complete an accounting of the pension plan prior to consideration of other claims, such as breaches of trust.

Almond's counsel thus not only undermined the judicial process, they also protracted the efficient disposition of this litigation.

#### IV. CONCLUSION

In sum, based on Almond's counsel's violations of Rule 11 and the Litigation Accountability Act, and pursuant to this Court's inherent authority, the SRHS Defendants respectfully request this Court enter an Order granting its Motion for Sanctions, and awarding attorneys' fees and costs incurred in preparing this Motion and in Opposing the Motion to Amend, and any other or further sanction as this Court may deem appropriate.

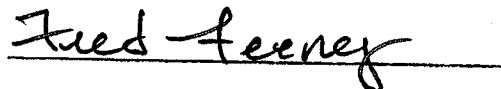
Respectfully submitted, this the 26th day of May, 2015.

SINGING RIVER DEFENDANTS

BY:



Andrea M. Kimball (*pro hac vice*)  
Carly D. Duvall (*pro hac vice*)  
DENTONS US LLP  
4520 Main Street, Suite 1100  
Kansas City, MO 64111-7700  
Phone: 816-460-2400  
Fax: 816-531-7545  
Email: [andrea.kimball@dentons.com](mailto:andrea.kimball@dentons.com)  
[carly.duvall@dentons.com](mailto:carly.duvall@dentons.com)



Fredrick B. Feeney, II (MSB 5168)  
Nathan L. Burrow (MSB 102865)  
Franke & Salloum, PLLC  
10071 Lorraine Road  
P.O. Drawer 460  
Gulfport, Mississippi 39502  
Phone: 228-868-7070  
Fax: 228-868-7090  
Email: [fbf@frslaw.com](mailto:fbf@frslaw.com)  
[nlb@frslaw.com](mailto:nlb@frslaw.com)

**CERTIFICATE OF SERVICE**

I, Fredrick B. Feeney, II, Counsel for Singing River Health System, do hereby certify that I have this day served via email and regular mail, postage prepaid, a true and correct copy of the above Brief in Support of Motion for Sanctions to the following:

Earl L. Denham, Esq.  
DENHAM LAW FIRM, PLLC  
P.O. Box 580  
Ocean Springs, MS 38566  
earl@denhamlaw.com

W. Harvey Barton, Esq.  
BARTON LAW FIRM, PLLC  
3007 Magnolia Street  
Pascagoula, MS 39567  
harvey@wbartonlaw.com  
*Counsel for Almond, Drury,  
Eiland, Bosarge, Thompson and  
Aguilar*

James R. Reeves, Esq.  
Matthew G. Mestayer, Esq.  
REEVES & MESTAYER,  
PLLC  
P.O. Drawer 1388  
Biloxi, MS 39533  
jrr@rmlawcall.com  
mgm@rmlawcall.com  
*Counsel for Lay*

J. Cal Mayo, Jr., Esq.  
Pope S. Mallette, Esq.  
MAYO MALLETTE, PLLC  
P.O. Box 1456  
Oxford, MS 38655  
cmayo@mayomallette.com  
pmallette@mayomallette.com

O. Stephen Montagnet, III, Esq.  
W. Thomas McCraney, III, Esq.  
MCCRANEY, MONTAGNET,  
QUIN & NOBLE, PLLC  
602 Ridgeland, MS 39157  
smontagnet@mmqnlaw.com  
tmccraney@mmqnlaw.com  
*Counsel for Brown*

Pieter Teeuwissen, Esq.  
SIMON & TEEUWISSEN,  
PLLC  
P.O. Box 16787  
Jackson, MS 39236  
pteeuwissen@bellsouth.net  
*Counsel for Taylor*

John L. Hunter, Esq.  
CUMBEST, CUMBEST,  
HUNTER & MCCORMICK P.A.  
P.O. Drawer 1287  
Pascagoula, MS 39568  
jlh@cchmlawyers.com  
*Counsel for Tolleson*

John A. Banahan, Esq.  
Jessica B. McNeel, Esq.  
Calen Wills, Esq.  
BRYAN, NELSON,  
SCHROEDER, CASTIGLIOLA  
& BANAHAN, PLLC  
P.O. Drawer 1529  
Pascagoula, MS 39568  
john@bnsbc.com  
jessica@bnsbc.com  
calen@bnsbc.com  
**Counsel for Dr. Nunenmacher,  
Bydalek and Vice**

Roy D. Campbell, III, Esq.  
BRADLEY ARANT BOULT  
CUMMINGS  
One Jackson Place  
188 East Capitol St., Ste 400  
Jackson, MS 39201  
rcampbell@babc.com  
**Counsel for Anderson**

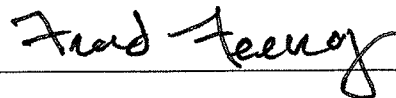
Stephen Peresich, Esq.  
Mary Van Slyke, Esq.  
PAGE, MANNINO, PERESICH  
& MCDERMOTT, PLLC  
P.O. Drawer 289  
Biloxi, MS 38533  
stephen.peresich@pmp.org  
mary.vanslyke@pmp.org  
**Counsel for Quintana**

Brett K. Williams, Esq.  
Hanson D. Horn, Esq.  
A. Kelly Sessoms, III  
DOGAN AND WILKINSON,  
PLLC  
P.O. Box 1618  
Pascagoula, MS 39568  
bwilliams@dwwattorneys.com  
hhorn@dwwattorneys.com  
ksessoms@dwwattorneys.com

Andrea M. Kimball, Esq.  
Carly D. Duvall, Esq.  
DENTONS US LLP  
4520 Main Street, Ste 1100  
Kansas City, MO 64111  
andrea.kimball@dentons.com  
carly.duvall@dentons.com  
**Counsel for SRHS**

Donald C. Dornan, Jr., Esq.  
Lauren R. Hillery, Esq.  
DORNAN LAW OFFICE,  
PLLC  
P.O. box 117  
Gulfport, MS 39502  
ddornan@dornan-law.com  
lhillery@dornan-law.com  
**Counsel for Crews**

This the 26th day of May, 2015.



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Fredrick B. Feeney, II (MSB 5168)  
Franke & Salloum, PLLC  
10071 Lorraine Road  
P.O. Drawer 460  
Gulfport, Mississippi 39502  
Phone: 228-868-7070  
Fax: 228-868-7090  
Email: fbf@frslaw.com