

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

CYNTHIA N. ALMOND

PLAINTIFF

VERSUS

CAUSE NO. 2014-2653

SINGING RIVER HEALTH SYSTEM

DEFENDANT

**Amended**  
**MOTION**

THIS CAUSE, having come on before the Court on the Motion of the Plaintiff, CYNTHIA N. ALMOND, by and through her attorneys of record, BARTON LAW FIRM, PLLC and DENHAM LAW FIRM, PLLC, and would move this Court for an Order directing the Special Fiduciary, Traci Christian, to generate and provide a list of the names of the employees who have withdrawn their money on deposit in the signing river hospital system retirement fund early. Said specific dates to be included in the produced list are from 2013 through the present.

WHEREFORE PREMISES CONSIDERED the Plaintiff respectfully requests that the Court GRANT her Motion and request any further relief which the Court may deem appropriate.

Respectfully submitted this the **12<sup>th</sup>** day of **June, 2018**.

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

BY: s/Earl L. Denham  
EARL L. DENHAM MS Bar No. 6047

BY: s/Harvey Barton  
W. HARVEY BARTON  
MS Bar No. 2104

CERTIFICATE

I, W. HARVEY BARTON, do hereby certify that I electronically filed the above and foregoing document with the Clerk of the Court utilizing the MEC system, which provides notification to all attorneys.

SO CERTIFIED on this the **12<sup>th</sup>** day of **June, 2018**.

BY: s/Harvey Barton  
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IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

CYNTHIA N. ALMOND, et al.

PLAINTIFF

v.

CAUSE NO. 2014-2653

SINGING RIVER HEALTH SYSTEM, et al.

DEFENDANT

**RESPONSE OF THE SPECIAL FIDUCIARY IN OPPOSITION TO  
PLAINTIFF'S AMENDED MOTION FOR DISCLOSURE OF THE IDENTITY OF  
CERTAIN MEMBERS OF THE SINGING RIVER HEALTH SYSTEM EMPLOYEES'  
RETIREMENT PLAN AND TRUST [DOC. 653]**

Traci M. Christian, Special Fiduciary of the Singing River Health System Employees' Retirement Plan and Trust (the "Plan"), responds in opposition to the amended motion filed by Cynthia N. Almond ("Plaintiff") [Doc. 653], seeking disclosure of the identity of certain members of the Plan, as follows:

1. Plaintiff seeks entry of an order by the court directing the Special Fiduciary "to generate and provide a list of the names of the employees who have [made an early withdrawal of] their money on deposit in [the Plan]" from 2013 to date.
2. The Special Fiduciary opposes Plaintiff's amended motion on the grounds (a) that in her opinion, to a reasonable degree of probability or certainty, the information sought by Plaintiff would not be meaningful to anyone in any way as it relates to the operations and administration of the Plan, and Plaintiff has not demonstrated how it would be of value and why she needs this information; (b) that commissioning special data reports of such information from Transamerica will be at a cost to the Plan and would not be money well spent, even wasted; and (c) that in any event, any person who withdrew his or her own employee contributions from the Plan early did so to his or her detriment and to the benefit of the remaining members of the Plan, making disclosure of their identity irrelevant.
3. Additional considerations are (a) that disclosure of the information sought would

be a violation of the privacy protection to which Plan members are entitled; and (b) that the amended motion may be a veiled attempt by Plaintiff to conduct discovery in contravention of the stay in both state and federal court, an issue which the Special Fiduciary defers entirely to the court.

Wherefore, premises considered, the Special Fiduciary prays for entry of an order denying Plaintiff's amended motion.

Respectfully submitted, this 18<sup>th</sup> day of June, 2018.

/s/ Charles J. Mikhail  
CHARLES J. MIKHAIL  
Counsel for the Special Fiduciary  
MS Bar No. 3018

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**CERTIFICATE OF SERVICE**

Undersigned counsel certifies that he has this day served a copy of the foregoing pleading on all counsel of record by way of the court's electronic filing system.

This 18<sup>th</sup> day of June, 2018.

/s/ Charles J. Mikhail  
CHARLES J. MIKHAIL

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

CYNTHIA N. ALMOND, ET AL.

PLAINTIFFS

VERSUS

CAUSE NO. 2014-2653

SINGING RIVER HEALTH SYSTEM, ET AL.

DEFENDANTS

**SINGING RIVER HEALTH SYSTEM'S RESPONSE TO  
PLAINTIFFS' MOTION (DOC.# 652) AND  
AMENDED MOTION (DOC.# 653) REGARDING  
EMPLOYEE NAMES**

COMES NOW the Defendant, Singing River Health System ("SRHS"), by and through its Counsel of Record, and in opposition to Plaintiffs' Motion (Doc.# 652) and Amended Motion (Doc.# 653), would show unto the Court the following, to-wit:

1. On or about June 12, 2018, Plaintiffs filed a Motion and Amended Motion asking the Court to order the Special Fiduciary "to generate and provide a list of the names of the employees who have withdrawn their money on deposit in the signing (*sic*) river hospital system retirement fund early. Said specific dates to be included in the produced list are from 2013 through the present." (*Doc.# 652 and Doc.# 653 at 1*).

2. SRHS opposes Plaintiffs' request.

3. Plaintiffs' request for discovery violates the stay orders in effect in both State and Federal Court. Plaintiffs failed to file a motion to lift the stay, and therefore, Plaintiffs' current motions must be denied.

4. Second, even if a proper motion to lift the stay had been filed, Plaintiffs cannot show that they are entitled to the names of employees who may have withdrawn money from the retirement fund. Plaintiffs have no standing to obtain confidential information about third parties without consent. Moreover, any information on the amount of the fund is already public

knowledge. The *Jones Class Action* settlement is being considered at the Fifth Circuit level based upon the amount in the fund in relation to respective claims previously plead. Any attempts by Plaintiffs to conduct discovery on who may have withdrawn funds are both irrelevant and immaterial. Such a fishing expedition would also constitute a violation of both the Federal and State Court stay orders and be inconsistent with the Fifth Circuit's mandate.

5. Finally, Plaintiffs' request for employee names violates important privacy considerations. Any employee pension fund information is confidential personnel file material. Plaintiffs have no claims against unknown and unnamed employees sufficient to warrant the Special Fiduciary to turn over a list of names. "To require an employer to surrender the personnel files of an employee to be 'sifted through' in such a fashion for no good cause would be an unwarranted invasion of privacy which this Court, under the circumstances, will not condone." See *White v. State*, 498 So. 2d 368, 371 (Miss. 1986); *Burrell v. State*, 727 So. 2d 761, 767 (Miss. Ct. App. 1989).

6. SRHS employees have an expectation of privacy in their pension fund information, including their names and the amounts of withdrawals and contributions. By analogy, under Mississippi banking law, "in no instance shall the name of any depositor, or the amount of the deposit be disclosed to anyone, except to report to approved parties . . .". *Miss. Code Ann. § 81-5-55*. Also, by analogy, *15 USC § 6801* states that "it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' non-public personal information." Although Singing River Health System and the Retirement Plan are not financial institutions, the concerns regarding privacy about personal financial information remain the same.

See, for example, *National Association of Retired Federal Employees v. Horner*, 879 F. 2d 873 (D.C. Cir. 1989). (“Court found names and addresses of retired and disabled Federal employees were non-disclosable under the Freedom of Information Act, and disclosure of which would clearly lead to unwarranted invasion of personal privacy.”)

7. SRHS requests that the Court deny Plaintiffs’ Motions.

WHEREFORE, PREMISES CONSIDERED, SRHS respectfully requests the Court deny Plaintiffs’ Motion and Amended Motion, and for such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,  
SINGING RIVER HEALTH SYSTEM

*/s/ A. Kelly Sessoms, III*

BY:

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**CERTIFICATE OF SERVICE**

I, A. Kelly Sessoms, III, of the law firm of Dogan & Wilkinson, PLLC, do hereby certify that I have this day electronically filed the above and foregoing Response to Plaintiffs' Motion and Amended Motion with the MEC System, which has provided a copy of same to all Counsel of Record.

SO CERTIFIED this the 15<sup>th</sup> day of June, 2018.

/s/ A. Kelly Sessoms, III

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A. KELLY SESSOMS, III, ATTORNEY  
FOR SINGING RIVER HEALTH SYSTEM

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**PLAINTIFF**

**v.**

**CAUSE NO. 2014-2653**

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**DEFENDANT**

**ORDER DENYNING MOTION TO PROVIDE NAMES OF PERSONS WHO WITHDREW RETIREMENT CONTRIBUTIONS IN LEU OF RECEIVING RETIREMENT BENEFITS**

Counsel for the Plaintiffs requested by motion and amended motion that the Special Fiduciary generate and supply a list of persons who chose to withdraw their employee contributions to the retirement fund in leu of receiving retirement benefits. The Court recalls that in previously arguing the motion, counsel sought to determine whether an officer or board member acted on "insider information" and withdrew their own employee contributions, knowing that the Plan was in dire financial condition.

Singing River objects to providing such information on all employees who may have chosen to remove their employee contributions on grounds of confidentiality. The Court considered whether this objection might be overcome if the Plaintiff provided a list of persons of interest, followed by an *in camera* inspection of records.

The Special Fiduciary joined in the confidentiality objection and pointed out that the request would generate an unnecessary cost to the Plan and would be of no use to anyone, because no damage occurs to the Plan or the other beneficiaries when a participant withdraws his or her contributions, because they do so to their detriment and

to the benefit of the Plan. The Plan saves money if a participant withdraws contributions in leu of receiving Plan benefits.

Therefore, the Motion and Amended Motion to reveal the names of persons who withdrew contributions is denied.

Ordered, this the 23rd day of June, 2018.

  
Senior Status Chancellor