

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

**MOTION OF COUNSEL FOR THE
SPECIAL FIDUCIARY FOR APPROVAL AND PAYMENT
OF FEES AND EXPENSES FROM MAY 18, 2018 – JUNE 14, 2018**

Undersigned counsel files this his motion for payment of fees and expenses as counsel for the Special Fiduciary.

1. Current time for services and receipts for expenses from May 18, 2018 – June 14, 2018, are set out in the attached invoice marked Exhibit A, for a total of \$4,421.25 (fees of \$4,185.00; expenses of \$236.25).

2. Said fees and expenses are necessary and reasonable.

Movant prays for entry of an order approving payment of \$4,421.25 to Charles J. Mikhail for his fees and expenses.

Respectfully submitted, this 14th 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 motion on all counsel of record by way of the court's electronic filing system and by electronic mail on counsel for all interested parties:

Earl Denham
Harvey Barton
Cal Mayo
Jim Reeves
Brett Williams

This 14th day of June, 2018.

/s/ Charles J. Mikhail
CHARLES J. MIKHAIL

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DEFENDANT

**ORDER APPROVING PAYMENT OF FEES AND EXPENSES FOR COUNSEL FOR
SPECIAL FIDUCIARY**

On June 14, 2018, counsel for the Special Fiduciary filed a motion for payment of fees and expenses. An objection was filed by Irby Tillman, who appears to be a beneficiary of the Plan. The Court has considered the objection and agrees with Mr. Tillman that every pension penny counts, and that efforts must be redoubled to reduce costs to the Plan.

This matter involves lengthy and intense litigation. The Special Fiduciary needs legal assistance, and Mr. Mikhail has provided valuable and necessary legal assistance to the Special Fiduciary. The Special Fiduciary needs to be represented and needs to be appraised of the progress of the litigation as it proceeds through both Federal and State Courts, and she needs representation at the pending mediation. That said, the Court directs Mr. Mikhail in each future motion for reimbursement to include additional information concerning the specific need for each charge. Mr. Mikhail shall also appraise the Court in each future motion of any effort on his behalf to reduce his charges or expenses.

In considering the request, the objection, and the need to preserve Plan assets, it is not clear to the Court the necessity of the attendance of Mr. Mikhail at the argument at the Fifth Circuit. It is not clear that he was a participant in the argument. Certainly, there is some benefit to the Special Fiduciary of having his report of the argument and the proceedings and his presence may have allowed him to be of benefit to the Court or to the participants, but this is not known to this Court. It is not clear to the Court that Mr. Mikhail's presence at the argument was necessary. Therefore, the Court withholds ruling on the request for 6.5 hours at \$225 per hour, for a total of \$1,462.50, until the necessity for such charge is demonstrated.

The Court approves payment to Mr. Mikhail of fees and expenses in the amount of \$2,958.75.

The Court directs Mr. Mikhail to make every reasonable effort to substantially reduce his time and billing in future requests. The Court would like to see a reduction of 25% or more if possible.

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


Senior Status Chancellor

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PLAINTIFF

v.

CAUSE NO. 2014-2653

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DEFENDANT

**RESPONSE OF COUNSEL FOR THE
SPECIAL FIDUCIARY TO THE COURT'S ORDER OF JUNE 25, 2018,
APPROVING [PARTIAL] PAYMENT OF HIS FEES AND EXPENSES**

Undersigned counsel for Traci M. Christian, Special Fiduciary of the Singing River Health System Employees' Retirement Plan and Trust (the "Plan"), responds to the court's order of June 25, 2018, approving only partial payment of his fees and expenses set out in the motion of June 14, 2018, as follows:

1. On June 14, 2018, counsel for the Special Fiduciary filed his motion for payment of fees and expenses in the total sum of \$4,421.25. The court considered the motion and the objections thereto and entered its order on June 25, 2018, approving only partial payment of those fees and expenses, the sum of \$2,958.75, and "[withheld] ruling on the request for 6.5 hours at \$225.00 per hour, for a total of \$1,462.50, until the necessity for such charge is demonstrated." Order at 2. Specifically, the court wished to have more information on "the necessity of the attendance of [counsel] at the argument at the Fifth Circuit." *Id.*

2. The Special Fiduciary and her counsel recognize, appreciate and agree with the court's observations and directive that "every pension penny counts", that "efforts must be redoubled to reduce costs to the Plan", that there is "[a] need to preserve Plan assets" and that counsel should "make every reasonable effort to substantially reduce his time and billing in future requests" – a reduction of 25% or more if possible. *Id.*

3. In that regard generally, and as to his attendance at the Fifth Circuit specifically, undersigned counsel would show the following:

(a) The Special Fiduciary is an intervenor and thus a party to the litigation in Chancery Court and the plaintiff in causes of action against Transamerica and KPMG in Circuit Court, as well as a participant in the fairness hearing relating to the class action settlement in federal court. Her support of the settlement is based on the belief that it is crucial to the survival of the Plan. The appeal by the objectors to the Fifth Circuit has a direct impact on the interest the Special Fiduciary is sworn to promote and protect.

(b) In the brief filed in the Fifth Circuit, the objectors attack all the scenarios of the various cuts to save the Plan which the Special Fiduciary presented to this court in March of this year and argue that “[a]ll of her proposed scenarios are a fallacy”; typically, they do so without any foundation or empirical evidence of any kind. Appellants’ Reply Brief at 2. They further criticize benefit reductions imposed by this court in its effort to save the Plan as “cuts [that] are subject only to the whim and caprice of a lower court judge without regard to the settlement contract.” *Id.* at 5. There is more. They recklessly assert, again without any support, that Plan beneficiaries “are suffering from the fraud, malfeasance, negligence, corruption and collusion of an entire system amassed against them.” *Id.* Objectors’ counsel have consistently operated in a wilderness of their own sets of rules of civil procedure, evidence, ethics and appellate practice before the Mississippi Supreme Court and the Fifth Circuit, lobbing irresponsible accusations against reputable and hardworking lawyers, judges and experts. No one who does not view the world through their lens is spared from their smear campaign. As “Uncle” Anthony Nicolella poignantly noted, “Pointin’ a finger at somebody don’t make ‘em a crook.” Objectors’ counsels’ theatrics and grandstanding in both state and federal courts are well

documented, conduct that would make Sinclair Lewis's character Elmer Gantry proud. So unfortunate when the stakes for Plan members are so high.

(c) The relevance of all the foregoing: there was no telling what might happen at oral argument, in general; specifically, what objectors' counsel would do or say to the Fifth Circuit panel about the Special Fiduciary's posture and the recommendations which she made to this court. Against this backdrop of mischaracterizations, the Special Fiduciary and her counsel conferred and decided that they would be remiss to absent themselves from the proceeding, even though counsel was not taking part in oral argument. This court also noted in its order that "there is some benefit to the Special Fiduciary of having [her counsel's] report of the argument and the proceedings and his presence may have allowed him to be of benefit to the Court or to the participants" The choice was between counsel attending and not being needed, or, skipping only to learn later that he *was* needed but nowhere to be found. Such would have been a dereliction of counsel's professional duty to his client and ultimately to all members of the Plan. In short, the Special Fiduciary and her counsel opted to err on the side of caution by having counsel attend the oral argument.

(d) Having commuted to New Orleans from Mississippi three days per week to attend graduate school at Tulane, it was not uncommon for counsel to get stuck in heavy morning traffic, accidents, construction, lane closings, etc., and be late for his 9 o'clock class. To guard against being late to the 9 a.m. argument at the Fifth Circuit on June 5, undersigned counsel traveled to New Orleans the afternoon of the previous day, paid for dinner, a hotel room, parking, breakfast and lunch after the oral argument, and did not bill the Plan for those expenses. With any other client, he would not have hesitated. And most attorneys and clients would treat such expenses as clearly legitimate charges to the client. Undersigned counsel's out-of-pocket

expenses, including mileage, for which he did not seek reimbursement in the invoice of June 14, 2018, were nearly \$600.00.

4. In closing, undersigned counsel is compelled to state that from the inception of this litigation, much of the attorney's fees incurred by the Special Fiduciary and charged to the Plan have been for time spent responding to frivolous actions by objectors' counsel, the most recent example being the motion for disclosure of the identity of retirees who made early withdrawal of their contributions to the Plan, without demonstrating the value of or need for such information, necessitating a response by the Special Fiduciary because of her concerns about the unnecessary cost to the Plan and the privacy of its members. The cost to the Plan in attorney's fees for this response was for 2.7 hours, a total of \$607.50, as reflected in the invoice of June 14, 2018. Their refraining from such actions in the future would help reduce costs to the Plan.

Wherefore, premises considered, the Special Fiduciary and her counsel pray that the court approve payment of counsel's 6.5 hours at \$225.00 per hour for attendance at the Fifth Circuit oral argument – the sum of \$1,462.50.

Respectfully submitted, this 26th day of June, 2018.

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

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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 and by electronic mail on counsel for all interested parties:

Earl Denham
Harvey Barton
Cal Mayo
Jim Reeves
Brett Williams

This 26th day of June, 2018.

/s/ Charles J. Mikhail
CHARLES J. MIKHAIL

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ORDER APPROVING PAYMENT OF COUNSEL FOR SPECIAL FIDUCIARY

On June 23, 2018, the Court considered a motion filed June 14, 2018 by counsel for the Special Fiduciary for payment of fees and expenses. The Court made a partial award of fees and expenses and requested additional information concerning billing by counsel for his attendance at the argument concerning the Plan at the Fifth Circuit. On June 26, 2018, Counsel filed a response providing additional information, which demonstrates that his attendance on behalf of the Special Fiduciary was reasonable and necessary and the request for payment is appropriate. Counsel also noted that he did not bill expenses of about \$600 related to that appearance.

The Court finds that the request for payment of \$1,462.50 for his attendance at the Fifth Circuit argument is granted, and the Special Fiduciary is authorized to pay said amount.

Ordered, this the 28th day of June 2018.


Senior Status Chancellor