

## BARTON LAW FIRM, PLLC

3007 Magnolia Street  
Pascagoula, Mississippi 39567  
Telephone: (228) 769-2070  
Facsimile: (228) 769-1992

W. Harvey Barton  
[harvey@wbaronlaw.com](mailto:harvey@wbaronlaw.com)

August 17, 2015

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**KEVIN W. HOLLAND**  
Individually and in his Official Capacity as CEO  
of SINGING RIVER HEALTH SYSTEM, ET AL.  
2012 HIGHWAY 90, STE. 34  
GAUTIER, MISSISSIPPI 39553

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**GARY CHRISTOPHER ANDERSON**  
BAPTIST HEALTH SYSTEMS  
1225 NORTH STATE STREET  
JACKSON, MS 39202

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**LEE BOND**  
5500 RITCHER ROAD  
OCEAN SPRINGS, MS 39564

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**PAUL "NEBO" CARTER**  
2615 BLACKFOOT ROAD  
VANCLEAVE, MS 39565

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MICHAEL CREWS**  
2916 SHELL LANDING BOULEVARD  
GAUTIER, MISSISSIPPI 39553

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**ALLEN CRONIER**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
13713 BUNKER HILL ROAD  
MOSS POINT, MISSISSIPPI 39563

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**HUGO QUINTANA, M.D.**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
3704 BIENVILLE BLVD. STE. B  
OCEAN SPRINGS, MISSISSIPPI 39564

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**IRA S. POLK, SR.**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
3530 SHERLAWN DRIVE  
MOSS POINT, MISSISSIPPI 39563

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**LAWRENCE H. COSPER**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
1116 HALSTEAD BAYOU DRIVE  
OCEAN SPRINGS, MISSISSIPPI 39564

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MICHAEL J. HEIDELBERG, SR.**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
810 BUENA VISTA STREET  
PASCAGOULA, MISSISSIPPI 39567

**Notice of Claim Pursuant to the MS Tort Claims Act**

August 17, 2015

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**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MICHAEL D. TOLLESON, SR.**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
1641 JACKSON AVENUE  
PASCAGOULA, MISSISSIPPI 39567

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MORRIS G. STRICKLAND**  
Individually and as a Member of the Board of Trustees OF  
SINGING RIVER HEALTH SYSTEM, ET AL  
794 DESTINY PLANTATION  
BILOXI, MISSISSIPPI 39532

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**STEPHEN J. NUNEMACHER, M.D.**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
1301 LADNIER ROAD  
GAUTIER, MISSISSIPPI 39553

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**TOMMY L. LEONARD**  
Individually and as a Member of the Board of Trustees of  
SINGING RIVER HEALTH SYSTEM, ET AL.  
14975 BIG RIDGE ROAD  
BILOXI, MS 39532

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MIKE MANGUM**  
Board of Supervisors, Jackson County, MS  
2309 ROSEWOOD STREET  
PASCAGOULA, MISSISSIPPI 39567

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**MELTON HARRIS**  
Board of Supervisors, Jackson County, MS  
3101 BOSTON AVENUE  
PASCAGOULA, MISSISSIPPI 39567

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**JOHN McKAY**  
Board of Supervisors, Jackson County, MS  
124 LINETT DRIVE  
OCEAN SPRINGS, MISSISSIPPI 39564

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**BARRY CUMBEST**  
Board of Supervisors, Jackson County, MS  
3101 LUM CUMBEST ROAD  
MOSS POINT, MISSISSIPPI 39562

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**TROY ROSS**  
Board of Supervisors, Jackson County, MS  
4 SCHOONER LANE  
OCEAN SPRINGS, MISSISSIPPI 39564

**RE: Cynthia N. Almond, Et Al. vs. Singing River Health System, Et Al.**

**NOTICE OF CLAIM PURSUANT TO THE MS TORT CLAIMS ACT**

Dear Sirs:

This letter is to inform you that the Barton Law Firm, PLLC and Denham Law Firm, PLLC, represent Cindy N. Almond, et. al. (consisting of approximately 100 retirees of the Singing River Health System) a

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complete listing of whom are attached hereto as Exhibit "A," regarding the failure of the Singing River Health System administrators and Supervisors of Jackson County, Mississippi, to fund the employees' retirement plan, hereinafter "the plan." As you are aware, the employer, i.e., Singing River Health System failed to pay its representative share to fund the plan as it was legally contracted so to do. Currently the retirement fund is underfunded by at least 50% equating to approximately \$147,000,000.00. This deficit caused by under funding and the cessation of funding continues to increase every day as the fund is currently paying out to all eligible retirees but no corresponding payments have been made by either the employer or the employees, despite Singing River Hospital System's continuing obligation to pay into the retirement plan, which has never been restricted or curtailed by Court order or otherwise.

**Legal Liability**

As you are aware, all of the above individuals and entities would have immunity under the State Torts Claim Act in the absence of fraud. Discovery is just beginning under the Chancery Court Complaint for Bill of Discovery, but nevertheless, we do know under oath the following, in addition to the obvious breach of contract action which is not subject to Sovereign Immunity. The hospital trustees made an informed decision to grant raises to the hospital staff rather than funding the retirement plan. A former trustee, Morris Strickland testified in his deposition of July 23, 2015 as follows:

Page 244, Line 12 through Page 245, Line 14

- Q. Do you recall if the administration ever advised the trustees that there was no need to put additional money into the retirement plan in 2009, '10 and '11?
- A. I wouldn't use the word "no need." The thing of it was based on cash flow, how much cash we had. We recognized --
- Q. Tell me what they said.
- A. I'm sorry?
- Q. Tell me what they reported to you.
- A. They told us that we had this much cash, and basically we're looking at pay raises for our employees that took so much money. I don't remember the amounts of it. That took so much money. And after we did this, that we would not have enough cash left to actually put any money into the Health System. [the plan]
- Q. Was it discussed to split that up between the Health System and the additional raises?
- A. We looked at several different things. Give a half percent raise, give a one percent raise, give a two percent raise and put some of this into the Health System. We went

**Notice of Claim Pursuant to the MS Tort Claims Act**

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through all the scenario like that. And the big issue was that the administration felt like that if we didn't give a raise like that, that, you know, basically they would be taking home less money and we would lose a lot of good people, professional people. I'm talking about the doctors, nurses, and key people.

In point of fact, many employees did not receive annual raises. Certainly raises were not given across-the-board on a percentage increase basis. And just as certainly, many employees did not receive any raises over periods of several years. This is in spite of the testimony of former CFO, Mike Crews, who testified incorrectly that all employees received across-the-board raises each year to the same percentage as Administrators. Mr. Crews's sworn testimony is as follows:

. Page 88, Line 1 through Page 89, Line 2

Q. Okay. And kind of walk me through that a little bit because if you're telling me that the hospital is having cash flow problems and problems keeping cash on hand., why are you giving raises when it doesn't look like you're in a good financial position?

A. Well, that's a -- that's a very valid point. It's a very good question. And we felt -- we felt like with our employee base, we had to give something. We almost had to give some raises. We know that other hospitals did not, but we felt like for morale purposes, and we felt like it was a nice gesture to the employees, even if it was just one percent or one and a half.

The administrators got the same raise as employees did. They didn't get anything over and above that. And I wasn't involved in too many of those decisions. I mean, I knew about it. I knew about what -- take a drink of water. I knew about how the process worked and how they came up with a percentage, and it was all based on available funds, also. But I don't think there was any year we did not give a raise to employees.

Q. So what you're telling me, from 2004 to 2014, your raises in your compensation package were the general across the board raises that every administrator got?

A. Yes. There was no separate package.

What we now know from Mr. Crews's sworn testimony is that his beginning salary package in 2004 was \$195,000.00 and when he left in 2014, Mr. Crews was making \$304,000.00. (See attached transcript from Crews deposition p. 247, lines 17-25, p. 248, lines 1-25 and p. 249, lines 1-7). Had all the hospital employees received a similar raise across-the-board on an annual basis then the Administrators would merely have made poor economic choices that adversely injured the plan. However, when the evidence clearly shows the outrageous conduct of the top level administrators advancing their own personal financial agenda to the

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exclusion of the retirees and employees contrary to their duty to the plan to fund it, then this is an act of fraud when the money was owed by existing contract to the plan. Each of the above-named administrators and others, including the Trustees of the hospital and of the plan to follow as the information is discovered, has personal liability not protected by the State Torts Claims Act. Each violated their fiduciary and contractual duty to the plan and the retirees and acted for their own financial benefit, or actively or persuasively enabled one another or third parties to acquire hospital funds that should have been deposited into the plan.

Additionally, the plaintiffs allege that the members of the Jackson County Board of Supervisors sitting in office from the time frame of September 2014 to December 2014 became personally aware of the lack of funding of the retirement plan and secretly and wilfully conspired with the administrators of the hospital and the attorneys of the hospital and of the Board of Trustees to terminate the plan and thereby extinguish the debt owed to the plan by the employer, Singing River Hospital and the owner of the hospital, i.e., Jackson County, Mississippi, and to conceal their actions. The conspiracy to perpetrate a fraud and/or cover one up places liability on all the conspirators to the same degree. The trustees' minutes of October 24, 2014, indicate that CFO Lee Bond had met with the Jackson County Board of Supervisors prior to the attempt to terminate the retirement plan, so that each and every supervisor was aware of the retirement plan shortage and participated in the secret plan to terminate and to conceal the termination until it was irrevocable. They were only thwarted by a Chancery Court TRO.

The passive actors in this action such as the Board of Supervisors, hospital trustees and other administrators of the hospital owed a fiduciary duty to the employees and retirees which they breached. As a result they have personal liability under the fraud exception to the tort claims act. The law clearly is that there is fraud liability for non-disclosure of the plan to terminate the retirement plan, and the defendants' silence as to this material fact known to the defendants and not communicated to the other contracting parties, i.e., the employees and retirees, gives a cause of action for fraudulent concealment. See Morgan v. Green-Save, Inc., 2 So.3d. 648 (Miss. App. 2009).

The diversion of public money by the administrators and their attorneys to hire attorneys and experts in an effort to terminate the plan, when said monies should have been invested into the plan further constitutes a breach of the fiduciary responsibilities owed to the plan participants.

**Demand**

Our clients and each of them demand a judgment in such an amount as will insure that they receive 100% of the benefits promised to them under the terms of the plan in accordance with their corresponding faithful years of service. Discovery is still ongoing so the exact amount of insurance coverage, if any, that is available has not been determined. Notwithstanding availability of coverage, our clients are seeking all damages necessary to adequately fund the retirement plan from any and all liable parties, both in their official

Notice of Claim Pursuant to the MS Tort Claims Act

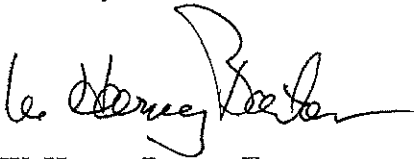
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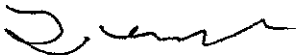
and/or personal capacity. Further, because of the fraud, willful concealment, and breach of fiduciary duty owed them by the defendants acting individually and in concert, each plaintiff is owed punitive damages, and their attorney fees and all costs of litigation.

This correspondence is written and served pursuant to the Mississippi Tort Claims Act, Miss. Code of 1972, §11-46-11.

Sincerely,



W. Harvey Barton, Esq.



Earl L. Denham, Esq.

1 IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

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6 CYNTHIA N. ALMOND, et al. PLAINTIFFS  
7 VERSUS CAUSE NO. 2401-2653 NH  
8 SINGING RIVER HEALTH SYSTEM, et al. DEFENDANTS  
9

10  
11  
12 DEPOSITION

13 OF

14 MORRIS STRICKLAND

15 Taken on behalf of the Plaintiffs  
16 9:02 a.m., Wednesday, July 22nd, 2015

17 before

18 Lynn Strickler, CCR #1299  
19  
20  
21

22  
23 COAST-WIDE REPORTERS  
24 Court Reporters  
25 Post Office Box 95  
Biloxi, Mississippi 39533-0095  
(228) 374-5066

**CERTIFIED COPY**

1 Q. Okay. Have you ever been to that facility?

2 A. I have. When it was being built, I was  
3 several times. We, the Board of Trustees, we would go  
4 tour the building.

5 Q. All right. Do you know what the rental rate  
6 per square foot was under the terms of that ninety-nine  
7 year lease?

8 A. I do not.

9 Q. Did that come before the board for approval?

10 A. It came before the board. I don't recall  
11 what the number was.

12 Q. Do you recall if the administration ever  
13 advised the trustees that there was no need to put  
14 additional money into the retirement plan in 2009, '10  
15 and '11?

16 A. I wouldn't use the word "no need." The  
17 thing of it was based on cash flow, how much cash we  
18 had. We recognized --

19 Q. Tell me what they said.

20 A. I'm sorry?

21 Q. Tell me what they reported to you.

22 A. They told us that we had this much cash, and  
23 basically we're looking at pay raises for our employees  
24 that took so much money. I don't remember the amounts  
25 of it. That took so much money. And after we did



1 this, that we would not have enough cash left to  
2 actually put any money into the Health System.

3 Q. Was it discussed to split that up between  
4 the Health System and the additional raises?

5 A. We looked at several different things. Give  
6 a half percent raise, give a one percent raise, give a  
7 two percent raise and put some of this into the Health  
8 System. We went through all the scenario like that.  
9 And the big issue was that administration felt like  
10 that if we didn't give a raise like that, that, you  
11 know, basically they would be taking home less money  
12 and we would lose a lot of good people, professional  
13 people. I'm talking about the doctors, nurses and key  
14 people.

15 Q. What were the trustees paid when you left,  
16 I'll say? It might have changed.

17 A. It was peanuts, I can tell you that. But I  
18 think it was -- it may have been a hundred dollars,  
19 hundred fifty dollars a meeting.

20 Q. It was like to you a token; right, for your  
21 services?

22 A. No.

23 MR. WILLIAMS: Object to the form.

24 A. No, it was not a token, but it cost me money  
25 to serve on that board, I'll say that.

1 IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

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6 CYNTHIA N. ALMOND, et al. PLAINIFFS  
7 VERSUS CAUSE NO. 2401-2653 NH  
8 SINGING RIVER HEALTH SYSTEM, et al. DEFENDANTS  
9

10  
11  
12 VIDEOTAPE DEPOSITION  
13 OF  
14 MIKE CREWS

15 Taken on behalf of the Plaintiffs  
16 10:01 a.m., Tuesday, June 23rd, 2015

17 before  
18 Lynn Strickler, CCR #1299  
19

20  
21  
22  
23 COAST-WIDE REPORTERS  
24 Court Reporters  
25 Post Office Box 95  
Biloxi, Mississippi 39533-0095  
(228) 374-5066

CERTIFIED COPY

1           Q.    Okay.  And kind of walk me through that a  
2    little bit because if you're telling me that the  
3    hospital is having cash flow problems and problems  
4    keeping cash on hand, why are you giving raises when it  
5    doesn't look like you're in a good financial position?

6           A.    Well, that's a -- that's a very valid point.  
7    It's a very good question.  And we felt -- we felt like  
8    with our employee base, we had to give something.  We  
9    almost had to give some raises.  We know that other  
10   hospitals did not, but we felt like for morale  
11   purposes, and we felt like it was a nice gesture to the  
12   employees, even if it was just one percent or one and a  
13   half.

14           The administrators got the same raise as  
15   employees did.  They didn't get anything over and above  
16   that.  And I wasn't involved in too many of those  
17   decisions.  I mean, I knew about it.  I knew about  
18   what -- take a drink of water.  I knew about how the  
19   process worked and how they came up with a percentage,  
20   and it was all based on available funds, also.  But I  
21   don't think there was any year we did not give a raise  
22   to employees.

23           Q.    So what you're telling me, from 2004 to 2014,  
24    your raises in your compensation package were the  
25    general across the board raises that every

1 administrator got?

2 A. Yes. There was no separate package.

3 Q. Do you -- do you recall the firm of Small &  
4 Buckalew?

5 A. Yes.

6 Q. Who are they and what was their role?

7 A. Okay. They're now known as FiduciaryVest,  
8 but they managed the managers of the pension fund, all  
9 the investments. We have different people who manage  
10 the money. You know, we may have ten or twelve  
11 different money managers. Well, they manage the money  
12 managers. You know, they keep an eye on them from a  
13 day-to-day basis and so we pay them a fee to do that.

14 Q. And what was the process by which they came  
15 to be hired and why?

16 A. I don't know. They -- Buckalew was there  
17 before -- before I arrived, and then he left and Harold  
18 Small took over the company. And I had a lot -- I  
19 really had a lot of confidence in his abilities. I  
20 think they did a good job.

21 Q. And when you say they managed the managers,  
22 who then did they report to?

23 A. They reported to head of HR who headed up the  
24 retirement committee, the director of HR.

25 Q. The expense of paying, for example, Small

1 Q. Are you aware of any pecuniary or financial  
2 interest that Morris Strickland had with the hospital?

3 A. No, I'm not.

4 Q. For example, do you know whether or not he  
5 had an interest in Acadian Ambulance Services?

6 A. I'm not aware of that if he did.

7 Q. Are you aware directly or indirectly whether  
8 Roy Williams had a financial interest in the laundry  
9 services, either Crown Laundry or Mississippi Laundry  
10 Service.

11 A. No. This is the first I've heard of that.

12 Q. Do you know whether Roy Williams had a direct  
13 financial interest in any of the outsourced debt  
14 collection processes by the hospital?

15 A. I don't know for sure if he had a financial  
16 relationship or not.

17 Q. All right. Help -- help me understand  
18 something. I believe you said that when you first went  
19 to work in 2004, your salary package was approximately  
20 a hundred and fifty thousand dollars?

21 A. I said a hundred and ninety-five thousand.

22 Q. 195. And when you left in 2014, ten years  
23 later, it was 305?

24 A. 304.

25 Q. 304.

1           A.    And some change.

2           Q.    And also what you told me is that these were  
3 average across the board incremental raises on an  
4 annual basis that all of the employees received?

5           A.    Unless there were market adjustments that  
6 need to be made for the executives, and the board used  
7 an outside company to do that.  If there were no market  
8 adjustments, we received what the employee -- every  
9 employee received.

10          Q.    So did you -- do you know if your salary  
11 package received a market adjustment?

12          A.    I know it did one year.  I can't remember  
13 the year.  '06 or '07.

14          Q.    So which of the employee salaries were  
15 subject to these market adjustments?

16          A.    Just the executive team.

17          Q.    So the average nurse, blue collar, laundry,  
18 housekeeper, they would not have been subject to that?

19          A.    They would not be subject to that through  
20 board action.  Sometimes we did have to make market  
21 adjustments when we canvassed the community to see what  
22 nurse -- say an RN at another place was making.  So  
23 sometimes we did make market adjustments to those.

24          Q.    Okay.  And who, then, would be the executive  
25 team that you're talking about?

1           A.    It would be the CEO, CFO. We got a bunch of  
2 C's. COO. And I wasn't involved in that. I don't  
3 know how far -- how far it went.

4           Q.    You don't know whether it extended to the  
5 vice presidents or directors?

6           A.    I don't think it extended to the vice  
7 presidents or directors.

8           Q.    Chief of staff of the hospital?

9           A.    That's not a paid position.

10          Q.    Was -- can you recall if there was ever a  
11 year in which the actuaries said, oh, the plan is doing  
12 so well, the hospital does not have to make a  
13 contribution this year?

14          A.    No, I'm not aware of that.

15          Q.    So when the -- when the actuaries would tell  
16 you that you had to make a contribution, did you in  
17 turn respond that, well, I don't have any money and we  
18 didn't contribute last year, so we're not going to  
19 contribute this year, or just --

20          A.    No, we didn't respond to the actuaries, an  
21 actuary report. I mean, there was no response  
22 necessary to it. It was for our use, the actuarial  
23 report. We didn't respond to them.

24          Q.    Would the firm of like Small -- I don't  
25 remember the full name.