

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION**

Dolores Jane Boden, Jeanine Godsey, and
Patricia Schaefer, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

St. Elizabeth Medical Center, Inc., The St.
Elizabeth Medical Center Employees' Pension
Plan Administrative Committee, and John Does
1-20,

Defendants.

Civil Action No.: _____

COMPLAINT

Plaintiffs Dolores Jane Boden, Jeanine Godsey, and Patricia Schaefer, by and through their attorneys, on behalf of themselves and all others similarly situated, based on personal knowledge with respect to their own circumstances and based upon information and belief pursuant to the investigation of their counsel as to all other allegations, allege the following.

INTRODUCTION

1. This is a class action against Defendants St. Elizabeth Medical Center, Inc. (“St. Elizabeth” or the “Company”),¹ the St. Elizabeth Medical Center Employees’ Pension Plan Administrative Committee (the “Administrative Committee”), and John Does 1-20 (the “Committee members”) concerning the St. Elizabeth Medical Center Employees’ Pension Plan (the “Plan”).

¹ In late 2008, St. Elizabeth Medical Center and the St. Luke Hospitals jointed to form what is now known as St. Elizabeth Healthcare. See <http://www.stelizabeth.com/history.aspx>. Plaintiffs use “St. Elizabeth” or the “Company” to refer to St. Elizabeth Medical Center, Inc., St. Elizabeth Healthcare, and any other affiliated entity.

2. As of June 30, 2012, the Plan was underfunded by more than \$204 million. *See* Interim Unaudited Consolidated Financial Statements and Supplementary Information, Saint Elizabeth Medical Center, Inc. For the Six Months Ended June 30, 2012 (the “June 2012 Consolidated Financial Statements”) at 51.

3. Indeed, an email letter sent to participants in the Plan (the “Participants”) on February 23, 2016 from Garren Colvin, President and Chief Executive Officer of St. Elizabeth, informed Participants that as of December 31, 2015, the Plan was only 58% funded. *See* Colvin Letter attached as Exhibit A.

4. Defendants purport to justify the severe underfunding on the grounds that the Plan is a “Non-ERISA Church Plan” and therefore is exempt from the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”). *See* Colvin Letter, Exhibit A.

5. To the contrary, as described herein, the Plan does not meet ERISA’s requirements for the “church plan” exemption, because it was not “established,” and is not “maintained” by a church. Rather, the Plan was established and is maintained by St. Elizabeth, which is a large healthcare company – not a church or a convention or association of churches.

6. As a result of its bogus claim that it is a church, the Company avoids its statutory retirement plan funding obligations to employees and thereby obtains a competitive advantage over other healthcare providers who meet their financial obligations to their employees.

7. Since the Plan is governed by all of the funding, fiduciary, and notice requirements of ERISA, this action seeks to require Defendants to comply with all of those requirements, and to pay damages and penalties as a result of their past failures to do so.

JURISDICTION AND VENUE

8. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

9. This court has personal jurisdiction over Defendants because they are headquartered and transact business in, or reside in, and have significant contacts with, this District, and because ERISA provides for nationwide service of process.

10. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District. A substantial part of the events or omissions giving rise to the claims asserted herein occurred within the Covington Jury Division.

PARTIES

Plaintiffs

11. Plaintiff Dolores Jane Boden is a citizen and resident of Anderson Township, Ohio. Plaintiff Boden was employed by St. Elizabeth as a registered nurse from 1968 until 1986, serving in numerous positions including head nurse of the coronary care unit. Plaintiff Boden is a current participant in the Plan.

12. Plaintiff Jeanine Godsey is a citizen and resident of Hebron, Kentucky. Plaintiff Godsey was employed by St. Elizabeth as a registered nurse for thirty one years, from 1973 until her retirement in 2003. Plaintiff Godsey is a current participant in the Plan.

13. Plaintiff Patricia Schaefer is a citizen and resident of Union, Kentucky. Plaintiff Schaefer was employed by St. Elizabeth as a nurse for seventeen years, from 1980 to 1997. Plaintiff Schaefer is a current participant in the Plan.

Defendants

14. Defendant St. Elizabeth is a 501(c)(3) non-profit corporation serving the Northern Kentucky/Greater Cincinnati region. Defendant is headquartered in Edgewood, Kenton County, Kentucky 41017. Defendant St. Elizabeth can be served through its registered agent, Robert M. Hoffer, 207 Thomas More Parkway, Crestview Hills, Kentucky 41017. The St. Elizabeth Medical Center Pension Plan Summary Plan Description dated August 2002 (the “2002 SPD”), attached as Exhibit B, identifies St. Elizabeth as the “Plan Sponsor.” *See* 2002 SPD at 16.

15. The 2002 SPD also notes that “[a]n Administrative Committee appointed by the Board of Trustees of St. Elizabeth Medical Center administers the plan and establishes rules and procedures for the Plan’s operation.” 2002 SPD at 14. *See also* 2002 SPD at 16 (noting that the members of the Administrative Committee “are appointed on a yearly basis by the Board of Trustees”).

16. John Does 1-20 are the individual members of the Committee and members of any other committee(s) which administer the Plan. The identity of the members of the Committee, and any of the other committee(s) which was or were responsible for carrying out the provisions of the Plan, is currently not known. Upon information and belief, John Does 1-20 are senior executive officers of the Company who knew or should have known the facts alleged

herein. The Committees and John Does 1-20 are hereafter collectively referred to as the “Committee Defendants.”

CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the class (the “Class”) defined as follows:

All participants in and beneficiaries of the St. Elizabeth Medical Center Employees’ Pension Plan (the “Plan”). Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plan.

18. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

19. Plaintiffs’ claims are typical of the claims of the members of the Class because Plaintiffs’ claims, and the claims of all Class members, arise out of the same conduct, policies, and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants’ wrongful conduct.

20. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- A. Whether the Plan is covered by ERISA;
- B. Whether the Plan Administrator failed to comply with ERISA’s reporting and disclosure provisions;
- C. Whether the Plan fiduciaries failed to fund the Plan and establish a funding policy in compliance with ERISA; and
- D. Whether the Plan fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above.

21. Plaintiffs will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action, and anticipate no difficulty in the management of this litigation as a class action.

22. This action may be properly certified under either subsection of Rule 23(b)(1). Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

23. In the alternative, certification under Rule 23(b)(2) is warranted because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

24. In the alternative, certification under Rule 23(b)(3) is also appropriate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein.

The maintenance of separate actions would place a substantial and unnecessary burden on the courts, and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages, and Defendants' misconduct will proceed without remedy.

SUBSTANTIVE ALLEGATIONS

A. Defendant's Business

25. St. Elizabeth is one of the oldest and largest medical providers in the Greater Cincinnati region, now operating seven facilities throughout Northern Kentucky – St. Elizabeth Covington, St. Elizabeth Edgewood, St. Elizabeth Falmouth, St. Elizabeth Florence, St. Elizabeth Ft. Thomas, St. Elizabeth Grant, and St. Elizabeth Owen. *See* <http://www.stelizabeth.com/about.aspx>.

26. St. Elizabeth also has vast resources to serve the Greater Cincinnati area, including almost 1,200 licensed beds, a physician organization which includes over 314 physicians and 71 mid-level providers (97 primary care and specialty office locations), more than 1,200 physicians with admitting privileges, more than 7,300 associates, three freestanding imaging centers, and two ambulatory surgery centers. *Id.*

27. The Company is not, and does not claim to be a church. The mission of St. Elizabeth concerns healthcare, not fulfilling the mission of any church:

Our mission is to provide comprehensive and compassionate care that improves the health of the people we serve.

See: <http://www.stelizabeth.com/about.aspx>.

28. Similarly, the Company's stated "vision" does not contain any religious focus, but rather says "St. Elizabeth is the preferred destination for healthcare, where innovative

professionals deliver the highest quality of care.” *See*

<http://www.stelizabeth.com/MissionVisionValues.aspx>.

29. Elsewhere on its website, St. Elizabeth identifies its “values” as follows:

INNOVATION – I seek better ways to perform my work, find creative solutions, and embrace change.

COLLABORATION – I understand that mutual respect and teamwork are critical to accomplishing goals. I work with others to achieve the best individual and collective outcomes.

ACCOUNTABILITY – I use resources efficiently, respond to others promptly, face challenges in a timely manner, and accept responsibility for my actions and decisions.

RESPECT – I respect the dignity and diversity of our associates, physicians, patients, family, and community members. I promote trust, fairness, and inclusiveness through honest and open communication.

EXCELLENCE – I believe in serving others by pursuing excellence in healthcare. I compassionately care for the mind, body, and spirit of each patient.

See <http://www.stelizabeth.com/MissionVisionValues.aspx>.

30. The Company’s June 2012 Consolidated Financial Statements further confirm this point, noting “St. Elizabeth Healthcare’s primary mission is to provide health care services to the residents of Northern Kentucky and the Cincinnati metropolitan region.” *See* June 2012 Consolidated Financial Statements at 5.

31. Further, the Company’s Board of Trustees is not controlled by a church. The Company’s website discusses the role Board members fulfill as follows: “As the governing body of St. Elizabeth Healthcare, the Board of Trustees approves strategic plans to establish the long-term direction and safeguard the mission and values of the 154-year old organization.” *See* <https://www.stelizabeth.com/NewsArticle.aspx?id=723>

32. The Board of Trustees members currently listed on the Company's website include:

- Michael A. Conner
- Marsha Croxton
- Thomas R. Dietz
- Christopher L. Fister
- George S. Hall, M.D.
- Robert Hoffer
- Michael Jones, M.D.
- LaRoy Kendall, M.D.
- Tillie Hidalgo Lima
- Fred A. Macke, Jr.
- Gary W. Moore
- Heidi C. Murley, M.D.
- Roger Peterman
- James Roebker, M.D.
- Debbie Simpson
- James Votruba
- Robert Zapp

See <http://www.stelizabeth.com/Board.aspx>

33. Thus, of the seventeen (17) individuals on the Board, none are associated with the Church. That the entire Board is comprised of laypeople further underscores that St. Elizabeth is concerned with healthcare not religion.

34. In fact, in January 2015, three CEOs – Ms. Simpson, President and CEO of Multi-Craft Litho Corp.; Ms. Lima, President and CEO of Best Upon Request; and Mr. Zapp, President and CEO of the Bank of Kentucky – joined the Board, and a former university president (Mr. Votruba) was elected chairman. Mr. Votruba replaced former chairman Ted Robinson, a lawyer and CPA, who is the co-founder and managing partner of River Cities Capital Funds, who stepped down from the St. Elizabeth Board after ten years. See “St. Elizabeth Healthcare Board Elects New Chairman,” News Release, Jan. 28, 2015, available at: <https://steh.com/Pages/About-Us/Board-of-Directors.aspx>.

35. Further, the Company's "Corporate Officers" team is comprised entirely of laypeople. *See* <https://steh.com/Pages/About-Us/Board-of-Directors.aspx>.

36. Corporate President Garren Colvin, who was named CEO in June 2015 has a business background and has served, among other roles, as the Company's VP of Finance and CFO. *See* <http://www.wcpo.com/news/local-news/kenton-county/edgewood/garren-colvin-named-st-elizabeth-healthcare-ceo>.

37. Corporate Vice President Gary Blank started with St. Elizabeth in 1981 as a nursing assistant and served in various nursing and director roles, including senior vice president of professional services since 2011. *See* <http://www.bizjournals.com/cincinnati/blog/2013/02/st-elizabeth-promotes-senior-vp.html>.

38. Corporate Treasurer Lori Ritchey-Baldwin, who was named Chief Financial Officer in December of 2014, has a business and finance background, serving as vice president, controller, and chief accounting officer at Chiquita Brands International from 2008 to 2012 and audit manager at Deloitte & Touche Professional Services prior to joining St. Elizabeth Healthcare. *See* <http://www.beckershospitalreview.com/hospital-executive-moves/st-elizabeth-healthcare-names-lori-ritchey-baldwin-cfo.html>.

39. The last member of the "Corporate Officers" team is Barbara L. Krohman, the Company's Corporate Secretary.

40. The fact that none of the members of the Board of Trustees or the Corporate Officers are associated with the church underscores that St. Elizabeth is a business, not a church.

41. The Company's connection to religion is only historic. For example, the "Organization and Mission" section of the Company's June 2012 Consolidated Financial Statements notes "Saint Elizabeth Medical Center, Inc. (St. Elizabeth Healthcare) is a Kentucky

Corporation founded by the Franciscan Sisters of the Poor in 1861. Sponsorship of St. Elizabeth Healthcare was transferred in 1973 to the Roman Catholic Diocese of Covington, Kentucky.”

June 2012 Consolidated Financial Statements at 5. *See also* <http://www.stelizabeth.com/about.aspx> (“St. Elizabeth Healthcare is sponsored by the Diocese of Covington”).

42. However, there is no discussion of what the Diocese of Covington’s “sponsorship” of St. Elizabeth entails or requires, or whether it even currently exists.

43. At bottom, upon information and belief, the Company is not required to follow any religious beliefs, practices, rules, restrictions, directions, or guidelines.

44. Despite its status as an ERISA plan, the Company has invoked Church Plan status to evade ERISA’s protections to which its employees are entitled. *See, e.g.*, Colvin Letter, Exhibit A (“As a Non-ERISA Church Plan, we are not required to follow ERISA minimum funding requirements.”); 2002 SPD at 15 (“Certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) do not apply to church plans.”).

45. The Company’s failure to treat the Plan as an ERISA plan puts the Plan’s participants at risk of receiving pension payouts drastically lower than those proposed, and deprives Plan participants of material information concerning this substantial risk as alleged below.

46. Moreover, by avoiding ERISA’s requirements, the Company obtains a competitive advantage over the other nonprofit healthcare entities that protect the retirements of their employees under ERISA.

B. The Plan

(1) St. Elizabeth Medical Center Employees’ Pension Plan Overview

47. St. Elizabeth maintains the Plan for its employees. The Plan was established and maintained by the Company to provide retirement income to employees.

48. The Plan is an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

49. The Plan is a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

50. The 2002 SPD notes that the “effective date of the original plan is January 1, 1966,” and that this “restated plan is effective October 1, 1990, with certain revisions effective as recently as 2001.” 2002 SPD at 4.

51. The Plan year is the 12-month period beginning January 1 and ending on December 31. *See id.*

52. St. Elizabeth employees become participants in the Plan on the January 1 following the date they: (a) reach age 20 ½, complete 6 calendar months of employment, and (b) are expected to work 1,000 hours or more during the Plan Year. *See* 2002 SPD at 5.

53. Plan participants are vested “upon the completion of five years of Continuous Service.” *See id.* at 4.

54. The Plan’s definition of “Continuous Service” has changed over the years, but “[a]fter January 1, 1976, Continuous Service is the number of years in which you were credited with 1,000 or more Hours of Service.” *Id.* at 2. The 2002 SPD also informs that, [f]or plan years beginning after January 1, 1981, you may be credited with a partial year of Continuous Service in your first year of employment and in your last year of employment, based on the ratio of your actual Hours of Service to 1,000 hours.” *Id.* at 2-3.

55. The Plan's "normal retirement date" is the "last day of the month in which you reach age 65, if you have completed 5 years of Continuous Service." *Id.* at 4.

56. The 2002 SPD informs Plan participants that if they retire on their "Normal Retirement Date, you may begin receiving monthly pension payments." *Id.* at 6.

57. The 2002 SPD also notes Plan participants will "normally receive a monthly pension for your lifetime." *Id.* at 11. However, if desired, Plan participants can choose to receive their pension in a few optional forms of payment, including a lump sum benefit or in installments. *See id.* at 11-12.

58. St. Elizabeth has the power to continue, amend, or terminate the Plan. Specifically, the 2002 SPD notes: "The pension plan has been established to provide long-term benefits for participants over an indefinite period of time. Naturally, it is intended that the plan will continue, but if circumstances prevent this, the plan can be terminated." 2002 SPD at 13. In other words, the Company maintains the Plan.

59. The 2002 SPD states that "[t]he St. Elizabeth Medical Center Employees' Pension Plan has been made available to provide you and your family additional income during your retirement years." 2002 SPD at 1. *See also id.* at 12 ("St. Elizabeth Medical Center funds the plan solely for the benefit of plan members and their beneficiaries.").

60. Notwithstanding the fact that the Plan is only 58% funded, the 2002 SPD further promises: "Contributions into your pension plan are made entirely by St. Elizabeth Medical Center. Each year St. Elizabeth Medical Center contributes to the plan an amount of money that is needed to provide retirement benefits." *Id.* at 5.

61. Upon information and belief based on a review of similar plans of healthcare companies that wrongfully claim to be "church plans," the Company has no legal obligation to

provide any funding to the Plan. Accordingly, retirement benefits are only available from the substantially underfunded assets of the Plan and whatever additional amounts the Company wishes to contribute in its sole discretion. Consequently, in the absence of the funding requirements provided by ERISA, in the event the Company elects not to fund the Plan, or terminates the Plan, both of which it can do in its sole discretion, participants would be denied a substantial portion of the retirement benefits they have been promised.

62. Regarding the administration of the Plan, the 2002 SPD notes: “An Administrative Committee appointed by the Board of Trustees of St. Elizabeth Medical Center administers the plan and establishes rules and procedures for the Plan’s operation.” 2002 SPD at 14.

63. The members of the Administrative Committee are appointed on a yearly basis by the Board of Trustees. *See id.* at 16.

64. Thus, at all relevant times, the Committee Defendants have been the Administrators of the Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). They have also been fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because they have exercised authority or control respecting management or disposition of Plan assets, or has had discretionary authority or discretionary responsibility in the administration of the Plan.

65. The 2002 SPD also identifies St. Elizabeth Medical Center as the “Plan Sponsor.” *See* 2002 SPD at 16.

66. The Company is a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it has exercised authority or control respecting management or

disposition of Plan assets, or has had discretionary authority or discretionary responsibility in the administration of the Plan.

67. In particular, the Company, acting through its Board of Trustees, Corporate Officers, officers, and employees, is responsible for all of the acts alleged herein. Additionally the Company has also been a party-in-interest under ERISA § 3(14), 29 U.S.C. § 1002(14), both because it is a fiduciary and because it is an employer whose employees are covered by the Plan.

(2) The St. Elizabeth Medical Center Employees' Pension Plan is not a "Church Plan" under ERISA

68. The Plan is not an ERISA "Church Plan."

69. As alleged above, several factors demonstrate that St. Elizabeth is not a religious institution. *See* ¶¶ 25-43.

70. Under Section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan must be both *established* and *maintained* by a *church* or by a convention or association of churches to qualify for the church plan exception.

71. The Plan was *established* by the Company or its predecessors, not by a church or convention or association of churches.

72. The Plan is *maintained* by the Company, not by a church or convention or association of churches.

73. Additionally, Section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), provides that a plan maintained by a church or a convention or association of churches includes a plan

maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

74. Since the Plan is maintained by a healthcare company, the Plan is *not* maintained by “an organization ... the principal purpose of which is the administration or funding of a plan or program for the provision of retirement benefits....” 11 U.S.C. § 1002 (33)(C)(i).

75. Moreover, the Plan is not maintained for employees of any church or convention or association of churches. It is maintained for employees of the Company -- *a hospital system*.

C. Defendants Breaches of Fiduciary Duties

(1) Defendants Breached their Fiduciary Duty to Ensure the Plan is Fully Funded

76. Under ERISA, the Plan must have an annual actuarial report assessing the plan’s funding needs. *See* ERISA § 103(d), 29 U.S.C. § 1023(d).

77. Defendants are further required to fund the Plan each year according to a funding plan each year that meets the funding standard of ERISA and is based on reasonable actuarial assumptions. *See* ERISA §§ 302, 303, 29 U.S.C. §§ 1083, 1083.

78. Defendants are responsible for setting the funding requirements and the funding policy for the Plan.

79. Defendants failed to set a funding policy that will adequately fund the anticipated obligations of the Plan or fund the Plan.

80. As of June 30, 2012, the Plan was underfunded by more than \$204 million. *See* Interim Unaudited Consolidated Financial Statements and Supplementary Information, Saint Elizabeth Medical Center, Inc. For the Six Months Ended June 30, 2012 (the “June 2012 Consolidated Financial Statements”) at 51.

81. Indeed, a February 23, 2016 email letter from Garren Colvin, President and Chief Executive Officer of St. Elizabeth, informed Participants that as of December 31, 2015, the Plan was only 58% funded. *See* Colvin Letter, Exhibit A.

(2) Defendants Breached their Fiduciary Duty to Avoid Conflicts of Interest

82. By continuing to set an inadequate funding policy and following that policy, which has resulted in the Plan becoming underfunded by over two hundred million dollars, Defendants have acted at all times in the interest of the Company, and have not acted solely in the interests of the Plan participants as is required of a fiduciary under ERISA.

83. St. Elizabeth benefits from Defendants' decision not to adequately fund the Plan, and Defendants have a conflict of interest that prevents them from carrying out their fiduciary duties in a manner consistent with ERISA.

84. Despite this conflict of interest, St. Elizabeth has failed to appoint fiduciaries who could carry out their duties to protect the Plan's participants in a manner consistent with ERISA or to take other appropriate steps to address the conflict.

85. As a result of this conflict of interest, and in light of Defendants' repeated and ongoing breaches of fiduciary duties, the Court should appoint an independent fiduciary who can protect the interests of Plan participants and carry out his or her duties consistent with ERISA.

**FIRST CLAIM FOR RELIEF
Declaratory and Equitable Relief
(Declaratory Judgement Act and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))**

86. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

87. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

88. Pursuant to this provision, 28 U.S.C. § 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief that the Plan is not a “church plan” within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and is thus subject to the provisions of Title I and Title IV of ERISA.

89. Plaintiffs further seek orders directing all Defendants to bring the Plan into compliance with ERISA, including the reporting and funding requirements of ERISA, 29 U.S.C. §§ 1021, 1023, 1082, 1102, and 1104, and by remedying the additional violations set forth below.

90. Additionally, Plaintiffs seek an order that St. Elizabeth make all contributions to the Plan as necessary to remedy the Plan’s funding shortfall.

SECOND CLAIM FOR RELIEF
Violation of Reporting and Disclosure Provisions
(ERISA §§ 101-104, 502(a)(1)(A), (a)(3), 29 U.S.C. §§ 1021-1024, 1132(a)(1)(A), (a)(3))

91. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

92. ERISA § 502(a)(1)(A), 29 U.S.C. 1132(a)(1)(A), permits a plan participant to bring a suit for penalties when a defendant violates the recordkeeping obligations set forth in ERISA.

93. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

A. Annual Reports

94. Under ERISA § 103, 29 U.S.C. § 1023, employee benefit plans are required to file an annual report with the Secretary of Labor. This report, submitted via Form 5500, must include certain specified information about the plan's finances, participants, and administration.

95. Defendants failed to file an annual report concerning the Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA § 103, 29 U.S.C. § 1023.

96. Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments.

B. Notification of Failure to Meet Minimum Funding Standards

97. Under ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), employers maintaining employee benefit plans are required to issue a notice to beneficiaries and participants whenever the plan fails to make a required installment or other payment required to meet the minimum funding standards under ERISA.

98. St. Elizabeth has failed to furnish the Plaintiffs or any member of the Class with a Notice with respect to the Plan pursuant to ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that the Health System failed to make payments required to comply with ERISA § 302, 29 U.S.C. § 1082.

C. Funding Notices

99. Under ERISA § 101(f), 29 U.S.C. § 1021(f), administrators of defined benefit plans are required to provide annual plan funding notices to all participants and beneficiaries of such defined benefit plans.

100. At no time has the Committee furnished Plaintiffs or any member of the Class with a Funding Notice with respect to the Plan pursuant to ERISA § 101(f), 29 U.S.C. § 1021(f).

101. As the Administrator of the Plan, the Committee has violated ERISA § 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the Plan with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f), and as such may be required by the Court to pay Plaintiffs and each Class member up to \$110 per day (as permitted by 29 C.F.R. § 2575.502(c)(3)) for each day that the Committee has failed to provide Plaintiffs and each Class member with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f).

THIRD CLAIM FOR RELIEF
Failure to Provide Minimum Funding
(ERISA §§ 302 and 502(a)(3), 29 U.S.C. §§ 1082, 1132(a)(3))

102. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

103. ERISA § 302, 29 U.S.C. § 1082, establishes minimum funding standards for defined benefit plans that require employers to make minimum contributions to their plans so that each plan will have assets available to fund plan benefits if the employer maintaining the plan is unable to pay benefits out of its general assets.

104. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

105. As the employer maintaining the plan, St. Elizabeth was responsible for making the contributions that should have been made pursuant to ERISA § 302, 29 U.S.C. § 1082, at a level commensurate with ERISA's requirements.

106. St. Elizabeth has failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

107. By failing to make the required contributions to the Plan, St. Elizabeth has violated ERISA § 302, 29 U.S.C. § 1082.

108. As a result of the failure of St. Elizabeth to fund the Plan in accordance with ERISA's minimum funding standards, Plaintiffs face a substantial risk of their pensions being lost or severely reduced.

FOURTH CLAIM FOR RELIEF
Failure to Establish the Plan Pursuant to a Written Instrument Under ERISA
(ERISA §§ 402, 502(a)(3), 29 U.S.C. §§ 1102, 1132(a)(2))

109. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

110. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will, among other things, “provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [Title I of ERISA].”

111. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

112. The Plan has not been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

113. As St. Elizabeth has been responsible for maintaining the Plan and has amendment power over the Plan, it violated § 402, 29 U.S.C. § 1102, by failing to promulgate

written instruments in compliance with these sections to govern the Plan operation and administration.

FIFTH CLAIM FOR RELIEF
Breach of Fiduciary Duty
(ERISA §§ 404, 409, 502(a)(2), 29 U.S.C. §§ 1104, 1109, 1132(a)(2))

114. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

115. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge his/her duties with respect to a plan solely in the interest of the participants and beneficiaries, and defraying reasonable expenses of administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

116. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and to restore to the plan any profits the fiduciary made through the use of the plan's assets. ERISA § 409 further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

117. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant, beneficiary, or fiduciary to bring a suit for relief under ERISA § 409.

118. As a fiduciary of the Plan, Defendants had the duty to comply with and enforce the provisions of ERISA alleged above.

119. Defendants have not complied with and/or enforced any of the provisions of ERISA set forth above with respect to the Plan.

120. By failing to enforce the provisions of ERISA set forth above, Defendants have breached their fiduciary duties.

121. The failure of Defendants to create and enforce adequate funding policies for the Plan, and properly fund the Plan, has resulted in a loss to the Plan equal to the foregone funding and earnings thereon, and this failure has profited St. Elizabeth by providing it the use for its general business purposes of money that it should have paid to the Plan.

122. Plaintiffs are entitled to recover those losses on behalf of the Plan.

JURY DEMAND

123. Plaintiffs demand a jury.

PRAYER FOR RELIEF

124. WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and requests that the Court awards the following relief:

- A. Certifying this action as a class pursuant to FED. R. CIV. P. 23;
- B. Declaring that the Plan is an employee benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and is not a Church Plan within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33);
- C. Ordering Defendants to bring the Plan into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plan in accordance with ERISA's funding requirements, disclose required information to the Plan's participants and beneficiaries, and

otherwise comply with all other reporting, vesting, and funding requirements of Title I of ERISA;

D. Requiring Defendants to make the Plan whole for all contributions that should have been made pursuant to ERISA funding standards, and for interest and investment income on such contributions, and requiring Defendants to disgorge any profits accumulated as a result of their fiduciary breaches;

E. Granting a preliminary and permanent injunction removing Defendants as Plan fiduciaries, and appointing one or more independent fiduciaries to hold the Plan assets in trust, to manage and administer the Plan and its assets, and to enforce the terms of ERISA;

F. Requiring the St. Elizabeth Medical Center Employees' Pension Plan to pay a civil money penalty of up to \$110 per day to Plaintiffs and each Class member for each day it failed to inform Plaintiffs and each Class member of its failure to fund the Plan in accordance with ERISA's requirements;

G. Requiring St. Elizabeth to pay a civil money penalty of up to \$110 per day to Plaintiffs and each Class member for each day it failed to inform Plaintiffs and each Class member with a Funding Notice;

H. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA, with respect to the Plan;

I. Awarding, declaring, or otherwise providing Plaintiffs and the Class all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper, and such appropriate equitable relief as the Court may order, including an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy; and

J. Awarding to Plaintiffs' counsel attorneys' fees and expenses as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine.

Dated: March 17, 2016

Respectfully submitted,

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