

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

CAROLYN MILLER,
1333 North Woodyear Street
Baltimore, Maryland 21217,
individually and on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

BON SECOURS HEALTH SYSTEM, INC.
1505 Marriottsville Road
Marriottsville, Maryland 21104,

Serve on: Martha C. Riva, Resident Agent
1505 Marriottsville Road
Marriottsville, Maryland 21104

and

PENSION AND INVESTMENT COMMITTEE
OF THE BON SECOURS HEALTH SYSTEM,
INC. BOARD OF DIRECTORS
1505 Marriottsville Road
Marriottsville, Maryland 21104,

Serve on: Martha C. Riva, Resident Agent
1505 Marriottsville Road
Marriottsville, Maryland 21104

and

JOHN DOES 1-20,

Defendants.

Civil Action No.: _____

CLASS ACTION COMPLAINT

Plaintiff Carolyn Miller, by and through her attorneys, on behalf of herself and all others similarly situated, based on personal knowledge with respect to her own circumstances and based upon

information and belief pursuant to the investigation of her counsel as to all other allegations, alleges the following.

INTRODUCTION

1. This is a class action against Bon Secours Health System, Inc. (“BSHSI” or the “Company”), the Pension and Investment Committee of the Bon Secours Health System, Inc. Board of Directors (the “Committee”),¹ and John Does 1-20 (the “Committee members”) concerning the Employees’ Retirement Plan of Bon Secours Baltimore Health Corporation (the “Bon Secours Plan”) and all the other defined benefit pension plans established and/or maintained by Bon Secours (collectively the “Plans.”)²

2. As of August 31, 2015, the Plans were underfunded by \$390.094 million. *See* Bon Secours Health System, Inc. and Subsidiaries Consolidated Financial Statements August 31, 2015 and 2014 (“2015 Consolidated Financial Statements”), at 39.³

3. As of August 31, 2014, the Plans were underfunded by \$314.225 million. *Id.*

¹ And/or any other committee with responsibility for managing/administering the Plans (defined below).

² According to the 2014 Consolidated Financial Statements, BSHSI administers eight pension plans for its employees, seven of which they claim to be “church plans.” *See* 2014 Consolidated Financial Statements at 33 (“Seven of the System’s eight defined benefit plans are deemed church plans under the Internal Revenue Code.”). Upon information and belief, the seven “church plans” are: Employee’s Retirement Plan of Bon Secours, Baltimore, Health Corporation, Inc. (MD); St. Frances Xavier Pension Plan (Bon Secours St. Francis Xavier Hospital); Employees’ Retirement Plan of Maryview Hospital (Maryview Hospital, Portsmouth, Va.); Employees Retirement Plan of St. Mary’s Hospital (Bon Secours St. Mary’s Hospital, Richmond, Va.); The Richmond Community Hospital Defined Benefit Pension Plan (Bon Secours Richmond Health Corporation, Inc. Richmond, Va.); Memorial Regional Medical Center Pension Plan (Bon Secours-Memorial Regional Medical Center, Inc. Mechanicsville, Va.); and the Archdiocese Pension Plan for the Archdiocese of New York. *See* http://www.pensionrights.org/sites/default/files/docs/listing_of_pbgc_church_plan_refunds_1991_-_2005.pdf.

³ Given that the Company reports its financial information in a consolidated format, this shortfall amount may apply to the other Plans.

4. As of August 31, 2013, the Plans were underfunded by \$290.227 million. *See* Bon Secours Health System, Inc. and Subsidiaries Consolidated Financial Statements and Consolidating Schedules, August 31, 2014 and 2013 (“2014 Consolidated Financial Statements”), at 35.

5. Defendants excuse the severe underfunding on the grounds that the Plans are “church plans” and therefore are exempt from the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

6. To the contrary, as described herein, the Plans do not meet ERISA’s requirements for the “church plan” exemption, because they were not “established,” and not “maintained” by a church. Rather, the Plans were established and are maintained by Bon Secours Health System, Inc., which is a business – not a church or a convention or association of churches.

7. Consequently, the Plans are 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.

PARTIES

Plaintiff

11. Plaintiff Carolyn Miller is a citizen and resident of Baltimore, Maryland. Plaintiff Miller was employed by Bon Secours Health System, Inc. for twenty four years, from July 1990 to January 2014, first working as a unit secretary at Bon Secours Hospital in Baltimore, MD, and subsequently in the EKG/stress test department, and thereafter in the EEG department for fifteen years where she served as a Cardiac/EEG Technician. Plaintiff Miller is a current participant in the Bon Secours Plan.

Defendants

12. Defendant BSHSI is a 501(c)(3) non-profit corporation organized under the laws of Maryland as a nonstock membership corporation, whose only member is Bon Secours, Inc. (“BSI”), a Maryland nonprofit, nonstock membership corporation with “no healthcare operations.” *See* 2015 Consolidated Financial Statements, at 7. Defendant BSHSI is headquartered in Marriottsville, Maryland.

13. The Committee is an unincorporated association, which, upon information and belief, is the Plan Administrator and/or named fiduciary for the Plans. According to the Bon Secours Health System, Inc. Quarterly Financial Disclosure As of and for the Three Months Ended November 30, 2015 (“November 2015 Disclosure”), the Committee:

Assists the Board in its efforts to optimize investment returns within established risk parameters for [BSHSI]’s short- and long-term investable assets. The Pension and Investment Committee also oversees the stewardship of assets set aside to provide long-term retirement benefits under defined benefit plans....

Id. at 48.⁴

14. John Does 1-20 are the individual members of the Committee and members of any other committee(s) which administer the Plans. 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 Committee and John Does 1-20 are hereafter collectively referred to as the “Committee Defendants.”

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and the class (the “Class”) defined as follows:

All participants in and beneficiaries in the Employees’ Retirement Plan of Bon Secours Baltimore Health Corporation, as well as the other defined benefit pension plans established and/or maintained by Bon Secours (the “Plans”). Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plans.

16. 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.

17. Plaintiff’s claims are typical of the claims of the members of the Class because Plaintiff’s 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.

⁴ The BSHI Board of Directors approves the primary investment policy, while the Pension and Investment Committee of the BSHI Board of Directors periodically reviews and approves the investment procedures and annually reviews the asset allocation and recommends changes to the BSHSI Board of Directors as appropriate. *Id.* at 31.

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

19. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action, and anticipates no difficulty in the management of this litigation as a class action.

20. 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 is 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.

21. 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.

22. 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 BSHSI's Business

23. BSHSI is organized as a Maryland not-for-profit organization. *See* 2015 Consolidated Financial Statements, at 7.

24. The principle activities of the Company "comprise health and nursing care services in the states of New York, Maryland, Virginia, Kentucky, South Carolina, and Florida." *Id.*

25. BSHSI's focus on providing healthcare and patient services further underscores that it is a healthcare conglomerate, not a church or association of churches.

26. The Company encompasses “19 acute-care hospitals, one psychiatric hospital, five nursing care facilities, four assisted living facilities and 14 home care and hospice services” and has over 22,000 employees. *See* <http://hso.bonsecours.com/about-us-about-us.html>.⁵

27. BSHSI is not, and does not claim to be a church.

28. In order to complete its mission of “aiding those in need,” the Company offers:

a wide variety of services, including acute inpatient, outpatient, pastoral, palliative, home health, nursing home, rehabilitative, primary and secondary care and assisted living, in Florida, Kentucky, Maryland, New York, South Carolina, and Virginia without regard to race, religion, color, gender, age, marital status, national origin, sexual orientation, veteran status, genetic information, disability or any other characteristic protected by applicable federal, state or local employment laws and/or regulations.

See 2015 Consolidated Financial Statements, at 9.

29. BSHSI considers activities related to this stated purpose to be operating activities, as well as “other incidental services that are closely related to healthcare.” *Id.*

30. Moreover, the Company’s Board of Directors is not controlled by a church.

31. The Board of Directors members currently listed on the Company’s Annual Report To The Community Fiscal Year Ending August 31, 2015 (“Annual Report 2015”) include:

- Chris Allen
- Richard Blair
- Charles H. Brown, III, Chair
- Sr. Elaine Davia, C.B.S.
- Marcia Dush
- Stephanie L. Ferguson, Ph.D.
- A. David Jimenez
- Gerard Kells
- Robert Kuramoto, M.D.
- Peter F. Maddox
- Jennifer O’Brien, J.D.
- Susan Sandlund, Ph.D.
- Donald G. Seitz, M.D.

⁵ According to the November 2015 Disclosure, BSHSI has 17,100 “full-time equivalent” employees. *See id.* at 50.

- Sr. Mary Shimo, C.B.S.
- Richard J. Statuto, President and CEO of BSHSI
- Sr. Alice Talone, C.D.S.
- Carol Taylor, R.N., Ph.D.

32. Thus, of the seventeen (17) individuals on the Board, fourteen (14) are laypeople. The fact that more than eighty percent (80%) of the Board is comprised of lay people underscores that BSHSI is concerned with healthcare and not religion.

33. The Board of Directors of BSHSI is appointed by Bon Secours, Inc. *See* November 2015 Disclosure, at 45.

34. As described by the Company, “[t]he Board functions generally in areas of policy development, quality improvement, goal setting, strategic planning and budgeting and general oversight.” There is no religious component to their job duties.

35. Further, of the thirteen (13) executive officers listed in the November 2015 Disclosure, ten (10) are laypeople, including the Chief Executive Officer, the Chief Financial Officer, General Counsel, Chief Administrative Officer and the Chief Medical Officer. *Id.* at 48-50.

36. Moreover, unlike a church, BSHSI recognizes annual net patient services revenue in the billions: \$3.3 billion in 2014 and \$3.2 billion in 2013. *See* 2014 Consolidated Financial Statements, at 4.

37. The annual net patient services revenue for the fiscal year ended August 31, 2015 exceeds \$3.3 billion. *See* 2015 Consolidated Financial Statements, at 4.

38. The vast majority of revenue generated by the Company comes from Medicare, Medicaid, and commercial and other managed care payors, sources which fund only health care activities. *See* 2015 Consolidated Financial Statements, at 12.

39. BSHSI also uses government bonds to fund its healthcare business, issued by such entities as the Economic Development Authority of the City of Norfolk, the Maryland Industrial

Development Financing Authority, the South Carolina Jobs-Economic Development Authority, the City of Russell, Kentucky, the Economic Development Authority of Henrico County, Virginia, and the Virginia Small Business Financing Authority. Over the course of its existence, hundreds of millions of dollars have been secured in this way by the Company to finance its healthcare business. *See* 2015 Consolidated Financial Statements, at 31-33.

40. At bottom, upon information and belief, there are no requirements with respect to religious beliefs, practices, rules, restrictions, directions, or guidelines in any of the Company's operations.

41. Despite the Plans' status as ERISA plans, the Company has invoked "Church Plan" status to evade ERISA's protections to which its employees are entitled. The Company's failure to treat the Plans as ERISA plans puts the Plans' participants at risk of receiving pension payouts drastically lower than those proposed, and deprives the Plans' participants of material information as alleged below.

42. Moreover, by avoiding ERISA's requirements, the Company obtains a competitive advantage over the other nonprofit healthcare entities that comply with ERISA.

B. The Plans

(1) Overview of the Plans

43. The Plans were established and maintained by the Company and its predecessors to provide retirement income to employees. Thus, the Plans were not established and are not maintained by a church or convention or association of churches.

44. As noted in the 2015 Consolidated Financial Statements:

[BSHSI]'s noncontributory defined benefit pension plans provide benefit based upon age at retirement, years of credited services, and average earnings.

See 2015 Consolidated Financial Statements, at 37. *See also* 2014 Consolidated Financial Statements, at 33 (same).

45. The Plans are “employee pension benefit plans” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

46. The Plans are defined benefit plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

47. Upon information and belief, at all relevant times, the Committee Defendants have been the Administrators of the Plans within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). They have also been fiduciaries of the Plans 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 the Plans’ assets, or have had discretionary authority or discretionary responsibility in the administration of the Plans.

48. The Company is a fiduciary of the Plans 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 the Plans’ assets, or has had discretionary authority or discretionary responsibility in the administration of the Plans.

49. In particular, the Company, acting through its Board of Directors, officers, and employees, is responsible for all of the acts alleged herein. The Consolidated Financial Statements confirm this, noting, “[t]he investment policy and objectives for defined benefit plan assets are established by BSHSI and are based on a long-term perspective.” *See* 2015 Consolidated Financial Statements, at 38.

50. 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 Plans.

(2) The Plans are not “Church Plans” under ERISA

51. The Plans are not “Church Plans.”

52. As alleged above, BSHSI is not church or convention or association of churches. *See* ¶¶ 23-42.

53. 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.

54. The Plans were *established* by the Company or its predecessors, not by a church or convention or association of churches.

55. The Plans are *maintained* by the Company, not by a church or convention or association of churches.

56. 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.

57. The principal purpose of BSHSI is to provide healthcare services, not to operate a pension system.

58. Since the Plans are maintained by a healthcare company, the Plans are *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).

59. Moreover, the Plans are not maintained for employees of any church or convention or association of churches. It is maintained for employees of the Company -- *a health care conglomerate*.

C. Defendants’ Breaches of Fiduciary Duty

(1) Defendants Breached their Fiduciary Duty to Ensure that the Plans are Fully Funded

60. Under ERISA, the Plans must have an annual actuarial report assessing the plans' funding needs. *See* ERISA § 103(d), 29 U.S.C. § 1023(d).

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

62. Defendants are responsible for setting the funding requirements and the funding policy for the Plans.

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

64. As of August 31, 2015, the Plans were underfunded by \$390.094 million. *See* 2015 Consolidated Financial Statements, at 39.

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

65. By continuing to set an inadequate funding policy, which has resulted in the Plans becoming underfunded by almost four 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 Plans' participants as is required of a fiduciary under ERISA.

66. BSHSI benefits from Defendants' decision not to fund the Plans adequately and Defendants have a conflict of interest that prevents them from carrying out their fiduciary duties in a manner consistent with ERISA.

67. Despite this conflict of interest, BSHSI have 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.

68. 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))

69. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

70. 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.”

71. Pursuant to this provision, 28 U.S.C. § 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the Plans are not “church plans” 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.

72. Plaintiff further seeks orders directing all Defendants to bring the Plans 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.

73. Additionally, Plaintiff seeks an order that BSHSI make all contributions to the Plans 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))

74. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

75. 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.

76. 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

77. 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.

78. Defendants failed to file an annual report concerning the Plans 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.

79. Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Plans 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

80. 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.

81. BSHSI has failed to furnish the Plaintiff 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

82. 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.

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

84. As the Administrator of the Plans, the Committee has violated ERISA § 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the Plans 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 Plaintiff 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 Plaintiff 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))

85. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

86. 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.

87. 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.

88. As the employer maintaining the plan, BSHSI 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.

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

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

91. As a result of the failure of BSHSI to fund the Plan in accordance with ERISA's minimum funding standards, Plaintiff faces a substantial risk of her pension 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))**

92. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

93. 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]."

94. 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.

95. The Plans have not been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

96. As BSHSI has been responsible for maintaining the Plan and has amendment power over the Plans, it violated § 402, 29 U.S.C. § 1102, by failing to promulgate written instruments in compliance with these sections to govern the Plans' 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))

97. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

98. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge his 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.

99. 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.

100. 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.

101. As fiduciary of the Plans, Defendants had the duty to comply with and enforce the provisions of ERISA alleged above.

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

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

104. The failure of Defendants to create and enforce adequate funding for the Plans has resulted in a loss to the Plan equal to the foregone funding and earnings thereon, and this failure has benefited BSHSI by providing it the use for its general business purposes of money that it should have paid to the Plans.

105. Plaintiff is entitled to recover those losses on behalf of the Plans.

PRAYER FOR RELIEF

106. WHEREFORE, Plaintiff prays that judgement 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 Plans are employee benefit plans within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), are defined benefit pension plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and are not “Church Plans” within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33);
- C. Ordering Defendants to bring the Plans into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plans in accordance with ERISA’s funding requirements,

disclose required information to the Plans' 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 Plans 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 the Plans' fiduciaries, and appointing one or more independent fiduciaries to hold the Plans' assets in trust, to manage and administer the Plans and their assets, and to enforce the terms of ERISA;

F. Requiring the Plans to pay a civil money penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff and each Class member of its failure to fund the Plans in accordance with ERISA's requirements;

G. Requiring BSHSI to pay a civil money penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff 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 Plans;

I. Awarding, declaring, or otherwise providing Plaintiff 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 Plaintiff's 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.

JURY DEMAND

Plaintiff, Carolyn Miller, individually and on behalf of all others similarly situated, by and through her attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues presented herein and triable as of right by jury.

Dated: April 18, 2016

Respectfully submitted,

/s/ Robert K. Jenner,
Robert K. Jenner, Esq. (Bar No. 04165)
Justin A. Browne, Esq. (Bar No. 29164)
Janet, Jenner & Suggs, LLC
Commerce Centre East
1777 Reisterstown Road, Suite 165
Baltimore, Maryland 21208
Telephone: (410) 653-3200
Facsimile: (410) 653-6903
Rjenner@Myadvocates.com
Jbrowne@Myadvocates.com

Pro Hac Vice to be Filed:

Edward W. Ciolko, Esq.
Mark K. Gyandoh, Esq.
Julie Siebert-Johnson, Esq.
KESSLER TOPAZ
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Robert A. Izard, Esq.
Mark P. Kindall, Esq.
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29 South Main Street, Suite 305
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Telephone: (860) 493-6292
Facsimile: (860) 493-6290
rizard@izardnobel.com
mkindall@izardnobel.com

Counsel for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carolyn Miller, Individually and on behalf of herself and all others similarly situated

1333 North Woodyear St., Baltimore, MD 21217

(b) County of Residence of First Listed Plaintiff Baltimore City, MD

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert K. Jenner, Esq. and Justin A. Browne, Esq. Janet, Jenner & Suggs, LLC, 1777 Reisterstown Rd., Suite 165 Baltimore, MD 21208

DEFENDANTS

Bon Secours Health System, Inc. and Pension and Investment Committee of the Bon Secours Health System, Inc. Board of Directors, 1505 Marriottsville Rd., Marriottsville, MD 21104

County of Residence of First Listed Defendant Howard County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C § 1001, et seq.

Brief description of cause: Pension Plans Underfunded.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/18/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert K. Jenner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:16-cv-01150-JKB Document 1-1 Filed 04/18/16 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

District of Maryland

Carolyn Miller, individually and on behalf of herself
and all others similarly situated

Plaintiff(s)

v.

Bon Secours Health System, Inc., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bon Secours Health System, Inc.
1505 Marriottsville Rd.
Marriottsville, MD 21104

Serve: Martha C. Riva, Resident Agent
1505 Marriottsville Rd.
Marriottsville, MD 21104

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Robert K. Jenner, Esq.
Justin A. Browne, Esq.
Janet, Jenner & Suggs, LLC
1777 Reisterstown Rd., Suite 165
Baltimore, MD 21208

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Maryland

Carolyn Miller, individually and on behalf of herself
and all others similarly situated

Plaintiff(s)

v.

Bon Secours Health System, Inc., et al.

Defendant(s)

Civil Action No.

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Robert K. Jenner, Esq.
Justin A. Browne, Esq.
Janet, Jenner & Suggs, LLC
1777 Reisterstown Rd., Suite 165
Baltimore, MD 21208

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: