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Richard Salvia, Alveira Dillard, and Virginia Coleman, individually and on behalf of those similarly situated, Plaintiffs, v. The Roman Catholic Archdiocese of Newark, New Jersey, Defendants.	: : : : : : : : : : :	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY DOCKET NO. ESX-L- Civil Action **COMPLAINT**

Plaintiffs, by their attorneys Jardim, Meisner and Susser, P.C., and Eascolaw, PLLC, make this Complaint based on the following:

SUMMARY OF THE CASE

1. The named plaintiffs, individually and on behalf of approximately 135 individuals similarly situated, are former employees in the hospital system operated by the Roman Catholic Archdiocese of Newark ("Archdiocese"). This case arises out of transactions orchestrated by the Archdiocese which deprived plaintiffs of at least $2.7 million in lifetime pension payments. The

Archdiocese not only breached its moral obligations to its former employees, but also its legal obligations as a contracting party and a fiduciary under New Jersey law.

THE PARTIES

2. Named plaintiff Richard Salvia worked for two of the hospitals in the Archdiocese' hospital system. He began as Controller at Saint Michaels Medical Center and was Director of Finance at Saint James Hospital of Newark ("St. James") from 1976-1993. His lifetime pension began on March 25, 2013, after more than a one-year delay in processing his benefit claim application. Because of the actions and violations of law alleged below, his pension payments ceased in November 2017.

3. Named plaintiff Alveira Dillard worked as a technician in labor and delivery at St. James from 1972-1994. Her lifetime pension began in 2010. Because of the actions and violations of law set out below, her pension payments ceased in November= 2017.

4. Named plaintiff Virginia Coleman worked at the management headquarters of the Archdiocese's hospital system from 1981 to 1994. Her lifetime pension began in 2012. Because of the actions and violations of law alleged below, her pension payments ceased in November 2017.

4. Defendant Roman Catholic Archdiocese of Newark reported $565 million in total assets, net assets of $263 million, and revenues of $51 million at year end 2017.

5. The Archdiocese has owned hospitals in Newark, including St. James, and has formed various entities through which it controlled those hospitals. The Archdiocese formed Cathedral Healthcare System ("System") in 1986 and it acted as the corporate headquarters for the Archdiocese's hospitals. In 1989, the Archdiocese formed Cathedral Health Services, Inc. ("CHS"), and merged St. James and other hospitals into it.

6. At all relevant times, the Archdiocese made all major decisions concerning the hospitals, including decisions with respect to the pension benefits offered to the employees of the hospitals.

7. The Archdiocese also made representations to the federal government that:

(a) it controlled and administered the hospitals;

(b) System and CHS were its agents for overseeing and controlling the hospitals;

(c) it controlled System and CHS by the power of appointment and removal of their officers;

(d) it exercised governance and control over the hospitals through the appointment of management personnel and Board members at the hospitals; and

(e) it controlled the administration of the pension plan for the persons working in the hospital system.

8. Based on those representations and the facts underlying them, the actions attributed to the Archdiocese include actions taken in the name of the Archdiocese, System, CHS, Saint Michael's Medical Center and St. James (or any pension plan Administrative Committee that they controlled), because all of those actions were at the specific direction of the Archdiocese, and/or were taken under policies and procedures mandated by the Archdiocese.

FACTUAL BACKGROUND

A. The Archdiocese Adopts a Business Strategy Focused on Assets in its Pension Plans

9. The Archdiocese sponsored pension plans providing income in retirement as part of the compensation it offered to the employees in its hospital system, including the St. James Hospital of Newark Retirement Income Plan ("SJH Plan").

10. The SJH Plan offered a guaranteed pension for life. For every year that employees worked, they earned an increase in monthly payments that started at retirement (benefits could

start as early at age 55 but the normal retirement age was 65) and lasted for the rest of their (or their spouse's) lives.

11. On January 1, 1974, the employee participants and beneficiaries in the SJH Plan became protected by a federal law, the Employee Retirement Income Security Act of 1974 ("ERISA"), which, among other things, required annual contributions to ensure that the SJH Plan would be able to pay the benefits it had promised.

12. The assets of the SJH Plan were held in a "Guaranteed Pension Account" at a major insurer ("Insurer") where they were used to purchase an annuity/pension guarantee from the Insurer when a plan participant became eligible to start pension payments.

13. A federal agency, the Pension Benefit Guaranty Corporation ("PBGC"), guaranteed the payment of benefits in the SJH Plan if the plan terminated with assets insufficient to pay all the guaranteed benefits.

14. As a result, before the events that caused this lawsuit, the retirement benefits of the individual named plaintiffs and the class participants were protected by: (a) ERISA; (b) guarantees from an Insurer; and (c) an ultimate benefit guaranty by the PBGC.

15. During the late 1980s, the Archdiocese decided to replace the pension plans for the employees working in its hospital system with cheaper retirement arrangements.

16. On October 24, 1988, the Archdiocese sent past and present employees a letter and notice that it wanted to terminate the SJH Plan. The letter assured the plan participants that:

(a) the "termination is subject to approval by the Pension Benefit Guaranty Corporation and the Internal Revenue Service;"

(b) the "termination will <u>**not**</u> reduce or adversely affect in any way the vested benefits which any pension plan participants or beneficiary is entitled to receive upon retirement or other termination of employment;" and

(c) "there appear to be sufficient assets to pay all benefit commitments under the Plan."

17. That last statement was false. There was not in fact enough money in the SJH Plan to cover the full cost of the pensions promised to its participants and beneficiaries.

18. This deficit in the SJH Plan's funds made the Archdiocese change its mind about terminating it because: (a) the PBGC would not allow plan termination unless there were enough assets in the plan to pay for all promised benefits; and (b) the Archdiocese did not want to spend the money to guarantee the pensions of the past and current employees of St. James.

B. The Archdiocese Modifies its Pension Strategy

19. Instead of putting more money into the plan, the Archdiocese developed a strategy to escape PBGC scrutiny and the protections of ERISA.

20. Without informing the participants and beneficiaries, the Archdiocese sent a request for a ruling to the Internal Revenue Service, stating that, although it was operating the SJH Plan under ERISA's rules, the SJH Plan was not subject to ERISA because it was a "Church Plan."

21. On November 21, 1990, the IRS issued a Private Letter Ruling ("IRS Ruling"), granting the Archdiocese's request.

22. After that, the Archdiocese ignored the protections of ERISA and the agencies enforcing it in its actions with respect to the SJH Plan and its participants and beneficiaries.

23. The Archdiocese concealed the IRS Ruling from plan participants and did not provide the participants new plan documents, describing the rules that governed the plan in the absence of the ERISA rules.

24. The Archdiocese did not tell the participants and beneficiaries that the IRS Ruling had stripped them of the ERISA protections, including the loss of the guarantee from the PBGC.

25. The Archdiocese moved as much of the pension plan assets as it could away from the Guaranteed Pension Account at the Insurer and into trust accounts that it established.

26. The Archdiocese reorganized and merged its hospital pension plans into a single pension program for employees of all the hospitals, which it named the Cathedral Health Services, Inc. Pension Plan ("CHS Plan").

27. There were enough assets in the CHS Plan from the prior plans to pay the pensions of all the current and former hospital employees, including the pensions of those who had worked at St. James.

28. However, the Archdiocese maintained separate accounts for the hospitals for various purposes, like Medicare reimbursement, and continued to account separately for the pensions owed to current and former employees of St. James. The Archdiocese then manipulated these pension accounts by adding other employee pension costs to the St. James subaccount. For example, the cost of the pensions earned by certain employees while they had worked at System were charged exclusively to the St. James account even though they provided services to all the CHS hospitals.

C. The Archdiocese Slashes the Plaintiffs' Pensions

29. In 1996-1997, the Archdiocese decided that the time was finally right to complete its pension plan strategy and terminate the hospital pension plans. By this time, the financial statements showed that there was at least $20 million more in assets set aside for the payment of the pensions to the hospital employees than the cost of paying everyone's pension, and the Archdiocese intended to benefit from this surplus on its books.

30. Despite the overall surplus, the subaccount that the Archdiocese maintained for the pensions of the current and former employees of St. James and System showed a $2.7 million deficit. The Archdiocese did not want to use the $20 million in surplus assets to cover that deficit and instead decided to cover the deficit by reducing the pension benefits of the St. James and System participants.

31. The Archdiocese could not eliminate the lifetime guarantee of anyone who had retired and had started receiving a pension because it already purchased annuities for them from the Insurer that guaranteed payment of their benefits for life.

32. The Archdiocese could not reduce the pension commitments to its current employees because it needed them to work in the hospitals and at System.

33. However, the Archdiocese could take action relating to the individual named plaintiffs and the class participants who: (a) were former employees of St. James or System; and (b) had not yet started receiving their pension payments.

34. In executing this scheme, the Archdiocese took the following actions:

(a) It removed assets earmarked for the purchase of insurance guarantees for the individual named plaintiffs and class participants from the Guaranteed Pension Account at the Insurer;

(b) It transferred the money into a different type of account that did not provide for the purchase of an insurance company guarantee when a participant began to receive pension payments and instead would pay the monthly pensions only until the money ran out ("Non-Guaranteed Pension Account"); and

(c) It transferred at least $2.7 million ***less*** than was necessary to pay the full lifetime pensions promised to the individual named plaintiffs and the class participants into the Non-Guaranteed Pension Account.

D. The Archdiocese Executes a Cover-Up

35. The Archdiocese knew that it was not providing enough money to pay lifetime pensions to the individual named plaintiffs and the class participants. But it also knew that, because none of the individual named plaintiffs or class participants had even started receiving their pension payments at the time of the 1996-1997 transactions, it would be decades before the money ran out.

36. Nevertheless, the Archdiocese took no chances that the individual named plaintiffs and class participants would discover either what it had done or how those actions would eventually affect their lives.

37. On October 10, 1996, the Archdiocese sent a letter to the individual named plaintiffs and class participants:

(a) confirming that it had "earned a right to receive a future pension benefit from our Pension Plan when you reach retirement age";

(b) stating in bolded all caps, "**THIS CHANGE WILL HAVE NO IMPACT ON YOUR RIGHT TO RECEIVE A FUTURE MONTHLY RETIREMENT BENEFIT FROM US;**"

(c) reaffirming the "obligation to you;" and

(d) assuring them that, "[t]he Pension Plan was fully funded and you will receive, when due, the full amount of your vested monthly retirement benefit . . . for as long as you are entitled to receive it."

38. The Archdiocese continued the cover-up for years after the 1996-1997 transactions by representing to the individual named plaintiffs and class participants that they would receive a "lifetime pension."

39. If participants asked about the 1996-1997 transactions, the Archdiocese sent them letters reaffirming that the transactions had had "no effect on the pension you will receive when you are eligible."

40. The Archdiocese also misrepresented to the government that it had purchased annuities for the individual named plaintiffs and class participants.

41. The Archdiocese never told the individual named plaintiffs or the class participants that:

(a) The Archdiocese had taken money earmarked for the purchase of insurance company pension guarantees for them out of the Guaranteed Pension Account;

(b) The Archdiocese had transferred the money to a Non-Guaranteed Pension Account that included no guarantee an insurance company that the pensions would be paid for life;

(c) The money transferred to the Non-Guaranteed Pension Account was not in fact sufficient to make the promised pension payments for life; or

(d) The Archdiocese knew that the promised lifetime monthly pension checks to the individual named plaintiffs and class members would end while many of them still had years to live.

E. The Archdiocese Abandons the Participants to Their Fate

42. In 2008, the Archdiocese decided that several of its hospitals would never be profitable and sold them to a company not affiliated with the Archdiocese named Catholic Health East ("CHE").

43. The asset purchase agreement with CHE provided that CHE was not responsible for the pensions earned by employees of the hospitals before the transactions.

44. As a result, when the individual named plaintiffs or class participants called with questions about their benefits, CHE was unable to help them. When CHE requested help from the Archdiocese for a participant, the Archdiocese responded that it was not responsible for the pensions.

45. The Archdiocese made it difficult for the individual named plaintiffs and members of the class to apply for a pension when they became eligible to receive one so that the money in the Non-Guaranteed Pension Account would last longer and to put more distance between the 1996-1997 transactions and the day the money would run out.

46. Whenever anyone asked the Archdiocese about the pensions of the individual named plaintiffs and class participants, the Archdiocese either ignored them or referred them to persons it had hired who had no benefits administration experience, had been given inadequate or no information and had insufficient authority to do anything or help them.

47. In or around 2015, Transamerica Insurance Company ("Transamerica"), which was then managing the Non-Guaranteed Pension Account, became concerned about the rapid depletion of the account. It made several attempts to warn the Archdiocese that it could not make pension payments to the individual named plaintiffs and class participants for much longer. The Archdiocese took no action to prevent the payments from stopping.

48. On November 3, 2016, Transamerica sent a letter to the individual named plaintiffs and class participants to whom it had been sending monthly pension checks, stating that:

> We regret to inform you that Transamerica has not received any deposits to the Plan for a number of years. As a result, the Plan's assets are diminishing and we anticipate that they will be depleted in approximately five to seven months, depending upon the investment performance of the assets. Once the Plan assets

have been entirely depleted, no further pension payments will be processed by Transamerica.

48. By that time, the individual named plaintiffs and class participants made decisions affecting their lives on the assumption that they would receive their pensions. They depended on the pension payments for food and shelter in their retirement. They had no idea before this letter arrived that their pensions were at risk.

49. Transamerica stopped sending pension checks to the named plaintiffs and the class participants when the money ran out in November 2017.

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this class action and seek certification of the following class:

Any person whom the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan and who is not receiving a monthly pension payment due to the actions set forth in this Complaint.

51. Plaintiffs also seek certification of the following sub-class:

Any person:

(a) who worked at System or another hospital other than St. James that the Archdiocese owned or operated;

(b) whom the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan; and

(c) who is not receiving a monthly pension payment due to the actions set forth in this Complaint.

52. On information and belief, the proposed class consists of approximately 135 members, and is therefore so numerous that joinder would be impractical. On information and belief, the proposed subclass exceeds fifteen persons and is so numerous that joinder would be impractical.

53. Because the actions of the Archdiocese relating to the pension plans affect, have affected and will affect each participant and potential class and subclass member identically:

(a) The claims of the individual named plaintiffs present common questions of law and fact applicable to all other potential class and subclass members;

(b) The claims of the individual named plaintiffs as participants in the pension plans are typical of the claims of all other potential class and subclass members;

(c) Class treatment is superior to other methods of adjudication because the prosecution of separate actions with respect to the claims in this case would create a risk of inconsistent adjudications with respect to individual members of the class and subclass that would either (i) establish incompatible standards of conduct for the defendant; or (ii) as a practical matter, be dispositive to the interests of other members of the proposed class and subclass not a party to the adjudications;

(d) The individual named plaintiffs have common interests with all other potential class and subclass members and have and will vigorously prosecute the interests of the class and subclass through qualified counsel; and

(e) The named individual plaintiffs have chosen Richard S. Meisner, Esq. of Jardim, Meisner, and Susser, P.C., and Edward Scallet, Esq. of Eascolaw, PLLC to represent the class and subclass. The firms have extensive experience in class actions, and they will adequately represent the individual named plaintiffs and the class participants.

COUNT 1
BREACH OF CONTRACT

54. Plaintiffs incorporate by reference all previous allegations.

55. At all relevant times, the Archdiocese offered to provide lifetime pension payments to the individual named plaintiffs and the class participants as part of the compensation for their labor.

56. The individual named plaintiffs and class participants accepted the offer by working at St. James, System, or elsewhere in the Archdiocese's hospital network.

57. On numerous occasions over the years, the Archdiocese provided to the individual named plaintiffs and class participants documents and written communications, setting forth the terms of the promise to pay them pensions.

58. On numerous occasions over the years, the Archdiocese sent written communications to the named individual plaintiffs and class participants reaffirming its promise to provide pension payments for life to them in exchange for their labor.

59. The Archdiocese breached its contractual commitment to the individual named plaintiffs and the class participants by not providing lifetime pensions in exchange for their labor.

WHEREFORE, plaintiffs, individually and on behalf of all people similarly situated, demand the following relief:

(a) Certification of a class of all persons who the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(b) Certification of a sub-class of all persons who worked at System or another hospital owned or operated by the Archdiocese other than St. James that the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(c) Compensatory damages, including all amounts that the Archdiocese is or was obligated to pay in pension benefits to the individual named plaintiffs and class participants;

(d) An accounting of all benefits, payments, and transfers of assets in the accounts of the SJH Plan or CHS Plan from 1991 to the present;

(e) All costs and expenses, pre-judgment and post-judgment interest, and attorneys' fees; and

(f) Such other relief as the Court deems necessary and appropriate.

COUNT 2
PROMISSORY ESTOPPEL

60. Plaintiffs incorporate by reference all previous allegations.

61. On numerous occasions over the years, the Archdiocese made written representations to the named individual plaintiffs and class participants containing a promise to provide pension payments for life to them in exchange for their work in the Archdiocese's hospital network.

62. The individual named plaintiffs and class participants justifiably relied on those promises in deciding to work at St. James, System or elsewhere in the Archdiocese's hospital network.

63. The individual named plaintiffs and the class participants suffered injury when their labor did not result in the lifetime pension which the Archdiocese had promised to them.

WHEREFORE, plaintiffs, individually and on behalf of all people similarly situated, demand the following relief:

(a) Certification of a class of all persons who the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(b) Certification of a sub-class of all persons who worked at System or another hospital owned or operated by the Archdiocese other than St. James that the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(c) Compensatory damages, including all amounts that the Archdiocese promised to pay in pension benefits to the individual named plaintiffs and class participants;

(d) Equitable relief to redress the damages suffered by the individual named plaintiffs and class participants in reliance on the promises made by the Archdiocese;

(e) An accounting of all benefits, payments, and transfers of assets in the accounts of the SJH Plan or CHS Plan from 1991 to the present;

(f) All costs and expenses, pre-judgment and post-judgment interest, and attorneys' fees; and

(g) Such other relief as the Court deems necessary and appropriate.

COUNT 3
BREACH OF FIDUCIARY DUTY

64. Plaintiffs incorporate by reference all previous allegations.

65. At all relevant times, the assets of the pension plans were held in trust and segregated from the Archdiocese's other business assets.

66. Under New Jersey law, any person who controls assets held in trust for the exclusive benefit of another is a fiduciary with respect to those assets.

67. At all relevant times, the Archdiocese knew and acknowledged that it was a fiduciary with respect to the individual named plaintiffs, the class participants and the other participants and beneficiaries of the pension plans.

68. Under New Jersey law, a fiduciary:

(a) must act solely in the interest of the participants and beneficiaries;

(b) is required to use reasonable care in administering the assets set aside for the benefit of the participants and beneficiaries; and

(c) may not enrich itself from the trust assets at the expense of the participants and beneficiaries.

69. The Archdiocese violated its fiduciary obligation to the individual named plaintiffs and class participants by taking the actions set out above, including but not limited to:

(a) Administering and accounting for its pension program in order to enrich itself at the expense of the individual named plaintiffs and class participants;

(b) Improperly and unlawfully transferring assets from the Guaranteed Pension Account at the Insurer earmarked for the purchase of insurance guarantees for the individual named plaintiffs and class participants into the Non-Guaranteed Pension Account with no insurance guarantee;

(c) Failing to assure that there was enough money set aside to make monthly retirement payments for the lives of the individual named plaintiffs and class participants;

(d) Using the surplus in overall pension plan assets for its own benefit instead of the benefit of the named plaintiffs and class participants;

(e) Not treating all trust beneficiaries equally by singling out the named plaintiffs and class participants for the loss of lifetime pension benefits;

(f) Misrepresenting to the individual named plaintiffs and class participants that their pensions had not been affected by the transactions in 1996-1997;

(g) Misrepresenting to the individual named plaintiffs and class participants that they would receive their pension benefits for life;

(h) Concealing from the individual named plaintiffs and class participants that it had not transferred enough money into the Non-Guaranteed Pension Account to make pension payments to them for the rest of their lives;

(i) Obstructing the rights of the individual named plaintiffs and class participants to apply for and obtain their pension benefits in order to conceal its violations; and

(j) Ignoring the efforts of Transamerica and CHE to help the individual named plaintiffs and class participants and prevent the loss of their pension benefits.

70. The individual named plaintiffs and the class participants sustained damages as a direct and proximate result of the Archdiocese's breaches of its fiduciary obligations.

WHEREFORE, plaintiffs, individually and on behalf of all people similarly situated, demand the following relief:

(a) Certification of a class of all persons who the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(b) Certification of a sub-class of all persons who worked at System or another hospital owned or operated by the Archdiocese other than St. James that the Archdiocese at any time considered to be a participant or beneficiary of the SJH Plan who is not receiving a monthly pension payment due to the actions set forth in this Complaint;

(c) Payment of an amount that will restore the pension benefits to which the individual named plaintiffs and the class participants are entitled;

(d) Payment of lost earnings on all pension payments that should have been but were not made to the individual named plaintiffs and the class participants;

(e) Payment to the individual named plaintiffs and class participants of their share of the surplus pension assets used by the Archdiocese for its own benefit instead of the benefit of the named plaintiffs and class participants;

(f) Payment of lost earnings of the individual named plaintiffs and class participants on their share of the surplus pension assets used by the Archdiocese for its own benefit instead of the benefit of the named plaintiffs and class participants;

(g) Disgorgement of profits that the Archdiocese has received from trust assets illegally obtained or not paid as promised;

(h) An accounting of all benefits, payments, and transfers of assets in the accounts of the SJH Plan and CHS Plan from 1991 to the present;

(i) Appropriate equitable remedies;

(j) Punitive damages;

(k) All costs and expenses, pre-judgment and post-judgment interest, and attorneys' fees; and

(l) Such other relief as the Court deems necessary and appropriate.

DESIGNATION OF TRIAL COUNSEL

Richard S. Meisner, Esq. and Michael V. Gilberti, Esq., of the law firm of JARDIM, MEISNER & SUSSER, P.C., attorneys for plaintiffs, are hereby designated as trial counsel under ***N.J Rule*** 4:25-4.

RULE 4:5-1 CERTIFICATION

In accordance with ***N.J. Rule*** 4:5-1, I hereby certify that the matter in controversy is not the subject of any other action pending in any other court or arbitration proceeding. I further certify that I am unaware of any other party who should be joined in this action at this time.

JARDIM, MEISNER & SUSSER, P.C.
Attorneys for Plaintiffs

By:______________________________
MICHAEL V. GILBERTI

Dated: May 7, 2019

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all appropriate and triable issues.

JARDIM, MEISNER & SUSSER, P.C.
Attorneys for Plaintiffs

By:______________________________
MICHAEL V. GILBERTI

Dated: May 7, 2019

Of Counsel (Pro Hac Vice Application to be Submitted)

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