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January 16, 2015

Celeste Oglesby, Esq.
Singing River Health System
2012 Highway 90, Suite 34
Gautier, MS 39553

RE: INSURED: Singing River Health System
 POLICY NO: 8211-9592
 CLAIM NO: 343260
 POLICY TYPE: Health Care Portfolio
 WRITING COMPANY: Federal Insurance Company
 SUBJECT: Singing River Pension Plan Litigation

Dear Ms. Oglesby:

Chubb and Son, is a division of and serves as claims manager for Federal Insurance Company ("Federal"). The above-referenced Healthcare Protection Policy (the "Policy") with Federal provides insurance protection to Singing River Health System ("SRHS"). Nevertheless, the Policy may not cover all of the allegations in the above-referenced matter. Existing law requires us to send this letter, which is known as a "Reservation of Rights" letter. This reservation-of-rights letter is not an attempt on our part to avoid our responsibilities to SRHS under the Policy, but to apprise SRHS of our obligations and rights. For the reasons set forth below, Federal will defend the **Insureds** subject to the following reservations of rights. This letter does not address coverage for Dr. Michael Tolleson. Federal's handling on behalf of Dr. Tolleson has been assigned to another examiner.

We appreciate and value SRHS as a customer. We are committed to working closely with you in the defense of this matter. Should you have any questions or concerns after reading this letter, please feel free to contact me at any time. To assist you in understanding this letter, we suggest that the Policy be reviewed together with this letter. This letter does not modify the terms and conditions of the Policy. Please note that the words that appear in **bold print** are defined in the Policy.

Federal issued the HealthCare Portfolio Policy No. 8211-9592 effective March 1, 2014 to March 1, 2015 to SRHS. The Fiduciary Liability Coverage Section of the Policy provides Limits of Liability of \$1 million for each **Loss**, subject to a \$1 million aggregate limit each **Policy Period**. It is also subject to \$10,000.00 Retention. **Defense Costs** are part of and deplete the Policy's

Exhibit E

SRHS/SRHSF Answer/CC100042

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Limit of Liability and are not in addition to the Policy's Limit of Liability. The Policy's Executive Liability, Entity Liability and Employment Practices Liability Coverage Section ("ELI/EPL Coverage Section") provides limits of liability of \$5 million for each **Loss** subject to an aggregate limit of \$5 million each **Policy Period**. The ELI/EPL Coverage Section is subject to a \$75,000 Retention. For reasons that will be discussed below, there is no coverage under the ELI/EPL Coverage Section.

This matter was first brought to our attention through the November 21, 2014 BancorpSouth Insurance Services, Inc. submission of an Acord Form stating "Notice of potential claim. There is no specific claim nor specific reason for a claim but they feel the potential for a fiduciary claim has been heightened when it was announced recently that Singing River Health System would be making changes to their Defined Benefit pension¹.

Subsequent to the November 21, 2014 Acord Form, Federal was placed on notice of the matters contained on Exhibit A to this letter.²

The action styled *Cynthia N. Almond vs. Singing River Health System Foundation; Singing River Health System Foundation, Inc.; Singing River Health Services Foundation; Singing River Health System Employee Benefit Fund, Inc.; Transamerica Retirement Solutions Corporation; John Doe Actuaries A, B, or C; and John Doe Accounting Firm A, B, or C* was filed on December 5, 2014 in the Chancery Court of Jackson County Mississippi under Cause No. 2014-2653-JB ("the Almond Complaint"). The Almond Complaint also refers to defendant KPMG Corporate Finance in its paragraph 7. In summary, the Almond Complaint alleges that Ms. Almond, an employee of the Singing River Health System was required to make payments into an investment account to fund her retirement and the defendants were required to match those payments. Plaintiff alleges that the defendants ceased making payments into that account and misled plaintiff into believing that the payments were being made. The Almond Complaint specifically rejects damages claims and seeks only declaratory and injunctive relief.

Separately, Ms. Almond filed a Temporary Restraining Order under the caption *Cynthia N. Almond vs. Singing River Health System Foundation; Singing River Health System Foundation, Inc.; Singing River Health Services Foundation; Singing River Health System Employee Benefit Fund, Inc., John Doe Actuaries A, B, or C; John Doe's Actuaries A, B, or C; and/or John Doe Accounting Firm A, B, or C* was filed on that same date, under the same cause number, enjoining the termination of the Singing River Health System Employees' Retirement Plan and Trust Agreement.

Ms. Almond filed an Amended Complaint on December 8, 2014 ("the Almond Amended Complaint"). It names Singing River Health System, a/k/a Singing River Hospital System;

¹ While not material to our ultimate coverage position, you should note that the Acord Form was insufficient to place Federal on notice of circumstances that could give rise to a **Claim** under the Policy because it does not contain the information required by section 11(c) of the Fiduciary Liability Coverage Section or 19(c) of the ELI/EPL Coverage Section.

If you would like a more detailed explanation as to why, please advise the undersigned and I would be happy to provide one.

² Federal has received numerous copies of many of the pleadings in this matter. The date that each was reported found on Exhibit A is the earliest date that the matter was received by Federal from any **Insured**.

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Singing River Hospital System Foundation, Inc.; Singing River Health System Foundation, Inc.; Singing River Health Services Foundation; Singing River Hospital System Employee Benefit Fund, Inc.; Transamerica Retirement Solutions Corporation; John Doe Actuaries A, B, or C; and John Doe Accounting Firm A, B, or C; Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cospser; Morris Strickland; Ira Polk; Stephen Nunenmacher; and Hugo Quintana and Kevin Holland individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund. Mr. Holland is named individually, as CEO of the Singing River Health System and in his official capacity of any of the Singing River Entities. The Almond Amended Complaint make essentially the same allegations as the Almond Complaint, but contains additional allegations that an attorney named Roy C Williams revealed that the board of trustees which administers the retirement plan had voted to terminate that Plan on November 29, 2014 but the minutes of that meeting had not yet been signed. It seeks an enjoinder against the trustees from signing those minutes.

On December 11, 2014, a purported class action complaint was filed in the United States District Court for the Southern District of Mississippi under Civil Action No. 1:14CV447KS-RHW styled *Thomas Jones; Joseph Charles Lohfink; Sue Beavers; Rodolfo Rel and Hazel Reed Thomas, on behalf of themselves and Others similarly situated v. Singing River Health Services Foundation; Singing River Health System Foundation, Singing River Hospital System Foundation, Inc.; Singing River Hospital System Employee Benefit Fund, Inc.; Singing River Hospital System; Transamerica Retirement Solutions Corporation; KMPG, LLP; Michael Heidelberg; Michael D. Tolleson; Tommy Leonard; Lawrence H. Cospser; Morris G. Strickland; Ira Polk; Stephen Nunenmacher; Hugo Quintana; Chris Anderson; Stephanie Barnes Taylor and Michael Crews* ("the Jones Complaint").

The Jones Complaint asserts 19 counts including: 1-Violation of the Contract Clause of the United States Constitution; 2-Violation of the Takings Clause of the United States Constitution; 3-Violation of 42. U.S.C. § 1983-Contract Clause against individuals in their official capacities only; 4-Violation of 42. U.S.C. § 1983-Takings Clause against individuals in their official capacities only; 5-Violation of the Mississippi Constitution Contract Clause; 6-Violation of the Mississippi Takings Clause; 7-Breach of Contract; 8-Accounting; 9-Declaratory Judgment; 10-Injunctive Relief; 11-Fraud, Intentional Fraudulent Misrepresentations and Deceit against Chris Anderson, Stephanie Barnes Taylor and Michael Crews in their individual capacities; 12-Fraud, Intentional Fraudulent Misrepresentations and Deceit against Michael J. Heidelberg, Michael D. Tolleson, Tommy Leonard, Lawrence H. Cospser, Morris G. Strickland, Ira Polk, Stephen Nunenmacher and Hugo Quintana, in their individual capacities only; 13- Claim for Equitable Relief Pursuant to ERISA § 502(a)(3); 14-Violation of Reporting and Disclosure Provisions of ERISA; 14-Claim for Failure to Provide Minimum Funding; 15-Failure to Provide Minimum Funding; 16-Breach of Fiduciary Duty under ERISA; 17-Breach of Fiduciary Duty; 18-Specific Performance and 19-Constructive Trust.

The named plaintiffs allege that they were employees of SRHS in Jackson County, Mississippi and were participants of and are will be receiving retirement benefits from the Singing River Health System Pension Plan ("the Plan"). SRHS is alleged to be a political subdivision of Jackson County. In summary, the plaintiffs allege that SRHS maintains the Plan as a defined benefit plan for approximately 2400 employees and 600 retirees. The Plan was closed to new participants on October 1, 2011. Defendant KPMG is alleged to have performed audits of the Plan that opined that the Plan was adequately funded, when in fact; it was so severely underfunded that the underfunding liability caused going concern issues for SRHS. It is alleged

that the KMPG audits were part of a conspiracy to suppress the true nature of the financial situation of the Plan or due to negligence in the performance of the audit. In July of 2014, a new auditor found that a prior period adjustment of accounts was necessary in the amount of \$61,608,000 and by November of 2014, the Plan was underfunded by at least \$149 million. Mr. Anderson, Ms. Barnes Taylor, Mr. Crews, Mr. Heidelberg, Mr. Tolleson, Mr. Leonard, Mr. Cosper, Mr. Strickland, Mr. Polk, Mr. Nunenmacher and Mr. Quintana are alleged to have misrepresented, falsely reassured others, failed to follow plan documents, presented false and misleading information and approved the dissemination of false and misleading information. In addition, Mr. Heidelberg, Mr. Tolleson, Mr. Leonard, Mr. Cosper, Mr. . Strickland, Mr. Polk, Mr. Nunenmacher and Mr. Quintana are alleged to have failed to reasonably inquire about the financial status of the Plan. The Jones Complaint seeks orders declaring that the Plan is an employee benefit plan subject to ERISA; ordering SRHS to bring the Plan in in compliance with ERISA by revising Plan documents to reflect that the Plan is a defined benefit plan; requiring SRHS to fund the plan; reforming the Plan to comply with ERISA's vesting and accrual requirements; providing benefits in the form of a qualified joint and survivor annuity; requiring compliance with ERISA notice and reporting requirements; requiring defendants as plan fiduciaries make the plan whole for any losses and disgorge any profits accumulated as a result of fiduciary breaches; appointing an independent fiduciary; requiring payment of civil penalties of up to \$110 per day for failing to inform the class of underfunding; an injunction preventing further ERISA violations; awarding attorney's fees and expenses under the common fund and other applicable doctrines; costs, prejudgment interest and other and further relief.

On December 16, 2014, a complaint styled *Maury Thompson vs. Singing River Health System, a/k/a Singing River Hospital System; Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cosper; Morris Strickland; Ira Polk; Stephen Nunenmacher and Hugo Quintana individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund and Kevin Holland* ("the Thompson Complaint"). Mr. Holland is named individually, as CEO of the Singing River Health System and in his official capacity of any of the Singing River Entities. The allegations and relief sought are essentially the same as those of the Almond Amended Complaint.

On December 22, 2014, a complaint styled *Howard Bosarge vs. Singing River Health System, a/k/a Singing River Hospital System, Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cosper; Morris Strickland; Ira Polk; Stephen Nunenmacher and Hugo Quintana individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund and Kevin Holland* ("the Bosarge Complaint"). Kevin Holland is named individually, as CEO of the Singing River Health System and in his official capacity of any of the Singing River Entities. The allegations and relief sought are essentially the same as those of the Almond Amended Complaint. On December 23, 2014, Mr. Bosarge filed an amended complaint that expanded the allegations of his original complaint ("the Bosarge Amended Complaint").

On December 24, 2014, a complaint styled *Kitty Patricia Aguillar v. Singing River Health System, a/k/a Singing River Hospital System; Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cosper; Morris Strickland; Ira Polk; Stephen Nunenmacher; Hugo Quintana and Kevin Holland individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund* ("the Aguillar Complaint"). It also names Mr. Holland in his official capacity. In summary the Aguillar Complaint alleges Ms. Aguillar had retired and alleges that she received a letter from

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defendant Kevin Holland advising that she would receive a distribution that was inconsistent with plan documents. The remainder of the allegations are the same as those of the Almond Amended Complaint.

On January 5, 2015, a Complaint styled *Ralph Drury v. Singing River Health System, a/k/a Singing River Hospital System; Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cospers; Morris Strickland; Ira Polk; Stephen Nunenmacher; Hugo Quintana and Kevin Holland individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund* was filed in the Chancery Court of Jackson County Mississippi under Cause No. 2015-0001-JB (“the Drury Complaint”). It also names Mr. Holland in his official capacity. The Drury Complaint’s allegations are the same as those of the Almond Amended Complaint.

It is our understanding that the Almond, Thompson, Bosarge, Aguillar and Drury Complaints have been or are in the process of being removed to the United States District Court for the Southern District of Mississippi.

On January 5, 2015, a purported class action complaint was filed in the United States District Court for the Southern District of Mississippi-Southern Division styled *Regina Cobb, Susan Creel and Phyllis Denmark on behalf of themselves and others similarly-situated, v. Singing River Health System; The Board of Trustees For the Singing River Health System; Michael J. Heidelberg; Michael D. Tolleson; Allen L. Cronier; Tommy Leonard; Lawrence H. Cospers; Morris G. Strickland; Ira S. Polk; Stephen Nunenmacher; Hugo Quintana; Marva Fairley-Tanner; William C. Descher; Joseph P. Vice; Martin D. Bydalek; Eric D. Washington; G. Chris Anderson and Kevin Holland, in their individual and official capacities* (“the Cobb Complaint”). The Cobb Complaint asserts 11 counts including: I- 42 U.S.C. § 1983- Violation of the Contracts Clause; II-42 U.S.C. § 1983- Violation of the Due Process Clause; III-42 U.S.C. § 1983- Violation of the Takings Clause; IV-Breach of Fiduciary Duties under ERISA; V-ERISA Penalties; VI-Equitable Relief under ERISA; VII-Breach of Contract; VIII-Equitable Estoppel; IX-Promissory Estoppel; X-Constructive Trust and XI-Fraud. The Cobb Complaint alleges the same facts (albeit in greater detail) as the Jones Complaint. The Cobb Complaint seeks declaratory relief, an injunction requiring the defendants to comply with the law; an order requiring specific performance; compensatory damages, statutory or punitive damages; statutory penalties, attorney’s fees, pre-judgment interest, post-judgment interest and costs as well as other relief.

On January 12, 2015 a derivative complaint was filed styled *Donna Broun, Francis Hannah, Aisha Dawn Smith, Sharyn Brooks, Johnys Bradley, Cabrina Bates, Vanessa Watkins, Bart Walker, and Linda D. Walley, individually as beneficiaries of an derivatively for on behalf of Singing River Health System Employee Retirement Plan and Trust versus Singing River Health System; Michael J Heidelberg; Michael D Tolleson; Alan L Cronier; Tommy Leonard; Lawrence H Cospers, Morris G Strickland, Ira Polk, Stephen Nunenmacher, Hugo Quintana, Gary C Anderson; Michael Crews and Stephanie Barnes Taylor* filed in the Chancery Court of Jackson County Mississippi under cause number 2015 – 0027 MLF (“the Broun Complaint”). All of the individual defendants are sued individually and all in their capacity as a current member of the board of trustees of Singing River Health Systems Employees Retirement Plan and Trust except for Mr. Strickland who is sued as a former member of that board. The Broun Complaint asserts three causes of action: I-Violations of the Mississippi Uniform Trust Code; II-Request for Temporary Restraining Order and III-Preliminary Injunction.

The causes of action also arise out of the failure to make contributions to the Plan and the intent to terminate the Plan. The Broun Complaint focuses upon an alleged conflict of interest between the trustees' duties to the Plan and their duties to Singing River Health System.

The Broun Complaint seeks an order pursuant to Miss.Code Ann. § 91-8-101 compelling the retirement fund trustees to pay money and restore property to the retirement trust in the amounts that they failed to collect and which is sufficient to effectuate the Plan's purposes; compelling the retirement trust trustees to account for the amounts they should have collected; appointment of a special fiduciary to take possession of the trust; suspension of the retirement trust trustees; removal of the retirement trust trustees; and an order voiding all actions of the retirement trust trustees which constitute a breach of trust; imposition of a constructive trust; specific performance of the health system's obligation to contribute to the retirement trust; temporary; preliminary and permanent injunctive relief and other relief.

On January 13, 2015, a complaint styled *Brenda Jean Eiland vs. Singing River Health System, a/k/a Singing River Hospital System, Michael Heidelberg; Michael Tolleson; Alan Cronier; Tommy Leonard; Lawrence Cosper; Morris Strickland; Ira Polk; Stephen Nunenmacher; and Hugo Quintana and Kevin Holland, individually and in their capacities as members of the board of trustees of the Singing River Health System Employee Benefit Fund* was filed under Cause No. 2015-0030 in the Chancery Court of Jackson County, Mississippi ("the Eiland Complaint"). The Eiland Complaint is essentially the same as the Almond Complaint.

Fiduciary Coverage Liability Section³

Insuring Clause 1 provides that:

The Company [Federal] shall pay, on behalf of the **Insureds**, **Loss** for which the **Insureds** become legally obligated to pay on account of any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period**... for a **Wrongful Act** committed, attempted or allegedly committed or attempted before or during the **Policy Period** by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 10 of this coverage section.

Fiduciary Claim is defined in Section 3 as amended by Endorsement 2(2) to include:

- (a) a written demand for monetary damages or non-monetary relief;
- (b) a civil proceeding commenced by the service of a complaint or similar pleading;
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal investigative order or similar document; or

against any **Insured** for a **Wrongful Act**, including any appeal therefrom.

That same section defines **Wrongful Act** with respect to any **Plan** as:

³ All references are to provisions of the Fiduciary Liability Coverage Section unless otherwise indicated.

- (a) any breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed, attempted, or allegedly committed or attempted by an **Insured** in the **Insured's** capacity as such;
- (b) any negligent act, error or omission in the **Administration** of any **Plan** committed, attempted, or allegedly committed or attempted by an **Insured** in the **Insured's** capacity as such; or
- (c) any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.

Insured is defined as the **Organization**, any **Plan** and any **Insured Person**. **Insured Person** includes "any past, present or future **Executive** or **Employee**" and any past present or future natural person trustee...."

Organization means the **Parent Organization** and any **Subsidiary**. **Subsidiary** is defined in Section 3 of the Policy's General Terms and Conditions as any organization while more than fifty percent (50%) of the outstanding securities or rights representing the present right to vote for election of or to appoint directors or trustees of such organization are owned, directly or indirectly, in any combination, by one or more **Organizations**; provided that **Subsidiary** shall not include any **Affiliate**.

Sponsored Plan means:

- (a) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** located anywhere in the world and which existed on or before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions...
- (b) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of the **Employees** or **Executives**, including any fringe benefit or excess benefit plan;
- (c) any other plan or program otherwise described in paragraphs (a) or (b) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this coverage section for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
- (d) any other plan, fund, or program specifically included as a **Sponsored Plan** by endorsement to this coverage section.

Sponsored Plan shall not include any employee stock ownership plan created or acquired by the **Organization** during the **Policy Period** (except as otherwise provided in Subsection 19 of this coverage section), or any multi-employer plan created before or during the **Policy Period**.

SRHS as the **Parent Organization** found in item 1 of the Policy's Declarations qualifies as an **Insured** under the Policy and the Plan appears to be a **Sponsored Plan**. As per my conversation with Nicole Tillman on January 15, all of the Singing River entities named in the Complaints are either current **Insured** entities, dormant **Insured** entities or the former names of **Insured** entities. As such, and subject to documentation if it should be required, they are **Insureds** under the Policy. Michael Heidelberg, Tommy Leonard, Lawrence H. Cospers, Morris G. Strickland, Ira Polk, Stephen Nunenmacher, Hugo Quintana, Chris Anderson (also named as G. Chris Anderson), Stephanie Barnes Taylor, Michael Crews, Kevin Holland, Marva Fairley-Tanner, William C. Descher, Joseph P. Vice, Martin D. Bydalek, Eric D. Washington, are **Insured Persons** as current or former trustees, **Employees** or **Executives**. Neither Transamerica Retirement Solutions Corporation; KMPG, LLP, John Doe Actuaries A, B, or C; and John Doe Accounting Firm A, B, or C are **Insureds** under the Policy. There is no coverage for them. There is also no coverage for any **Insured** outside of their capacities as Trustees, or for SRHS as an employer or sponsor **Organization**.

Each of the Complaints is a **Fiduciary Claims** against an **Insured** which were reported during the **Policy Period** and trigger Insuring Clause 1.

Paragraph 3 provides that **Related Claims** means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

The Almond, Jones, Thompson, Bosarge, Aguillar, Drury, Cobb, Broun and Eiland Complaints, as well as the Almond and Bosarge Amended Complaints all are based upon; arise from the same or related facts, circumstances and/or transactions, and clearly the same or related series of facts, circumstances, situations, transactions or events.

Condition 9(f) provides that "(a)ll **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Subsection 10(b) of this coverage section, regardless of whether such date is before or during the **Policy Period**." The Almond, Jones, Thompson, Bosarge, Aguillar and Cobb Complaints are one **Claim** under the Policy and will be treated as first made on December 5, 2014, the date that Almond Complaint was first received by SRHS. Federal will only apply one Retention and only one Limit of Liability is available.

We recognize that the allegations in the Complaints are unsubstantiated contentions at this time. Nothing in this letter is intended to suggest or imply that those allegations have any legal or factual merit. Nevertheless, we must reserve our right to decline or limit coverage should any of the terms and conditions of the Policy, including the Endorsements thereto, prove to be applicable.

Exclusion 5(c) provides (t)he Company [Federal] shall not be liable for **Loss**, other than **Defense Costs** which is based upon, arising from, or in consequence of the failure to collect an employer's contributions owed to a **Plan** unless the failure is because of the negligence of any **Insured**. The Complaints allege that the Trustees failed to collect SRHS contributions owed to a Plan. Federal reserves the right to apply this exclusion to such **Loss**.

A number of the complaints assert breach of contract causes of action. Section 4(e) provides that “The Company [Federal] shall not be liable for **Loss** on account of any **Claim** against an **Insured** based upon, arising from, or in consequence of the liability of any **Insured** under any contract or agreement; provided that this Exclusion 4(e) shall not apply to the extent that (i) an **Insured** would have been liable in the absence of such contract or agreement; or (ii) such liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established. Should liability attach to an **Insured** based upon the breach of any contract and it does not fall within the exceptions to this exclusion, no coverage would be available.

Exclusion 4(m) as amended by Endorsement 7 provides that “The Company [Federal] shall not be liable for **Loss** on account of any **Claim** against an **Insured** based upon, arising from, or in consequence of:

- (i) the committing in fact of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, if a judgment or other final adjudication establishes such a deliberately fraudulent act or omission, or willful violation of any statute or regulation; or
- (ii) such **Insured** having gained in fact any profit, remuneration or advantage such **Insured** was not legally entitled.

The Complaints contain allegations that could trigger this exclusion should, in the case of exclusion 4m(i) a final judgment or other final adjudication, or in the case of 4(m)(ii), a factual determination establish their applicability.

Exclusion 5(b) as amended by Endorsement No. 8 provides “the Company [Federal] shall not be liable for **Loss**, other than **Defense Costs** which constitutes:

- (i) benefits due or to become due under any **Plan**,
- (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, including but not limited to **Loss** resulting from the payment of plaintiff attorneys’ fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits,

except to the extent that:

- (A) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
- (B) a **Fiduciary Claim** made against an **Insured** alleges a loss to the **Plan** and/or the accounts of such **Plan**’s participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Fiduciary Claim** are characterized by plaintiffs as “benefits” or held by a court as “benefits”.

Federal reserves its rights to apply this exclusion should it become applicable.

Section 3, as amended by Endorsements 1, 3, 4 and 9 defines **Loss** as:

... the total amount which any **Insured(s)** becomes legally obligated to pay on account of any covered **Fiduciary Claim** including, but not limited to, damages, judgments, settlements, pre-judgment and post-judgment interest, **Defense Costs** and solely with respect to **Insuring Clause 2, Settlement Fees**.

Loss does not include:

- (b) any costs incurred by an Organization or Plan to comply with any order for injunctive or other Non-monetary relief, or to comply with an agreement to provide such relief; matters uninsurable under the law pursuant to which this policy is construed.
- (d) taxes, fines or penalties⁴, except punitive⁵, exemplary or liquidated damages, or the multiple portion of any multiplied damages award, except:
 - (i) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or respectively, of the Employee Retirement Income Security Act of 1974, as amended.

All of the Complaints seek injunctive and other non-monetary relief. Some seek penalties and punitive damages. Federal will not be liable for any settlement or damages that fall outside of the definition of **Loss**.

Condition 13 provides that “[i]f any **Loss** under this coverage section is insured under any other valid and collectible insurance policy(ies), than this policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this coverage section.” Accordingly, please provide us with copies of any other insurance policies that may provide coverage for this matter as well as copies of any correspondence to or from those other carriers pertaining to this matter.

Defense and Settlement, Section 11, grants Federal the right and duty to defend this **Claim**. Because of the nature of this action, at the request of various parties Federal has consented to

⁴ See Endorsement No. 9 which provides a \$25,000 sublimit of liability for civil penalties imposed upon an **Insureds** serving as fiduciaries under section 502(c) of ERISA. That \$25,000 sublimit is part of and not in addition to the \$1 million limit of liability provided by this coverage section.

⁵ Endorsement 4 provides “**Loss**, as defined in Subsection 3 Definitions of this coverage section, is amended to include punitive or exemplary damages, or the multiple portion of any multiplied damage award, levied against an **Insured** (“Punitive Damages”), if and to the extent that such Punitive Damages are insurable under the law of the jurisdiction most favorable to the insurability of such Punitive Damages provided such jurisdiction has a substantial relationship to the relevant **Insured**, to the Company, or to the **Claim** giving rise to such Punitive Damages. Accordingly, paragraph (d) of the term **Loss**, as defined in Subsection 3 Definitions of this coverage section, is amended to effect the purposes of this endorsement.”

your request to Andrea Kimball of the Dentons law firm and Roy C. Williams of the firm of Dogan & Wilkinson, PLLC to defend the SHRS entities the Plan and Michael Heidelberg; Tommy Leonard; Lawrence H. Cospers; Morris G. Strickland; Ira Polk; Chris Anderson; Stephanie Barnes Taylor and Michael Crews, Kevin Holland, Marva Fairley-Tanner, William C. Descher, Martin D. Bydalek, Eric D. Washington, G. Chris Anderson. Federal has also consented to the representation of Dr. Hugo Quintana by Stephen Peresich, Esq. of Page, Mannino, Peresich & McDermott, PLLC and Drs. Vice and Nunenmacher by John Banahan, Esq. of Bryan, Nelson, Schroeder, Castigiloa & Banahan, PLLC. In addition, Federal's consent to these firms is subject to the reservations set forth in this letter and such firm's compliance with the *Litigation Management Guidelines*, which will be provided to the each firm.

Additionally, pursuant to Section 11(c) SRHS agreed that no **Insured** may **incur Defense Costs**, admit liability for, or settle any **Claim** without Federal's written consent.

ELI/EPL Coverage Section⁶

Insuring Clause 1 provides that "(t)he Company [Federal] shall pay, on behalf of each of the **Insured Persons**, Loss for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **D&O Claim** first made against the **Insured Person**, individually or otherwise, during the Policy Period or, if exercised, during the Extended Reporting Period, for a **D&O Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **D&O Claim** is reported to the Company [Federal] in writing in the manner and within the time provided in Subsection 18 of this coverage section. Insuring Clause 2 provides similar coverage to the Organization for **Loss** which the **Organization** grants indemnification for the **Insured Persons** and Insuring Clause 3 provides similar coverage to the **Organization**.

The Complaints allege **D&O Wrongful Acts** against **Insured Persons** and the **Organization** that were made during the **Policy Period** and thus trigger Insuring Clauses 2 and 3.

Insuring Clause 4 provides that "the Company [Federal] shall pay, on behalf of the **Insureds**, Loss which the **Insureds** become legally obligated to pay on account of any **Employment Claim** first made against the **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for an **Employment Practices Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Insureds** before or during the **Policy Period**, but only if such **Employment Claim** is reported to the Company [Federal] in writing in the manner and within the time provided in Subsection 18 of this coverage section.

The Complaints allege **Employment Practices Wrongful Acts** against **Insured Persons** and the **Organization** that were made during the **Policy Period** and thus trigger Insuring Clause 4.

Exclusion 7(e) applicable to all Insuring Clauses of the ELI/EPL Coverage Section provides that (t)he Company [Federal] shall not be liable for **Loss** on account of any **Claim** for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the

⁶ All references in this portion of the letter are to provisions of the ELI/EPL Coverage Section unless otherwise indicated

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Employee Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985), or amendments to or regulations promulgated under any such law, that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**) ("Employee Benefits Program Laws), including but not limited to any:

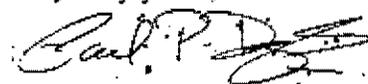
- (i) retirement income or pension benefit program;
- (ii) employee stock purchase or employee stock ownership plan;
- (iii) profit sharing plan;
- (iv) deferred compensation plan;
- (v) vacation, maternity leave, personal leave, or parental leave;
- (vi) severance pay arrangement;
- (vii) supplementary unemployment compensation plan;
- (viii) apprenticeship program;
- (ix) pre-paid legal service plan or scholarship plan;
- (x) life insurance plan;
- (xi) health, sickness, medical, dental, disability or dependant care plan;
- (xii) welfare plan; or
- (xiii) similar arrangement, program, plan or scheme;

provided that this Exclusion 7(e) shall not apply to any **Employment Claim for Retaliation**.

All of the Complaints assert **Claims** for alleged violations of the responsibilities, obligations and duties imposed by federal, state, or local statutory law or common law governing an employee benefit arrangement or program, and more particularly a retirement income or pension benefit program. This exclusion operates to preclude coverage under the ELI/EPL Coverage Section. Because this exclusion is determinative of coverage, we are not raising every provision that may be applicable to this coverage section, but reserve the right to do so in the future.

In the meantime, we must reserve all rights and defenses to which Federal may be entitled under the Policy or applicable law. Please do not hesitate to contact me if you have any questions about this matter or if you have any additional information of which we should be aware.

Very truly yours,



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Exhibit A

<u>Loss report date</u>	<u>Caption</u>	<u>Venue</u>	<u>Relief</u>
12/10/14	Cynthia N. Almond vs. Singing River	Chancery Court-Jackson County	Temporary Restraining Order
12/10/14	Cynthia N. Almond vs. Singing River	Chancery Court-Jackson County	Declaratory/Injunctive Relief
12/12/14	Thomas Jones et al. v. Singing River	USDC SDMS Southern Division	Declaratory Relief, Funding, Penalties etc.
12/29/14	Cynthia N. Almond Amended Complaint;	Chancery Court-Jackson County	Declaratory/Injunctive Relief
12/29/14	Thompson v. Singing River	Chancery Court-Jackson County	Declaratory/Injunctive Relief
12/29/14	Kitty Patricia Aguilar v. Singing River	Chancery Court-Jackson County	Temporary Restraining Order/Subpoena
1/5/15	Ralph Drury v. Singing River	Chancery Court-Jackson County	Declaratory/Injunctive Relief
1/6/15	Howard Bosarge vs. Singing River Complaint & Amended Complaint	Chancery Court-Jackson County	Temporary Restraining Order/Subpoena
1/8/15	Regina Cobb et al. v Singing River et al.	USDC SDMS Southern Division	Declaratory Relief, Damages, Penalties etc.
1/12/15	Donna Broun et al v SRHS et al.	Chancery Court-Jackson County	Temporary Restraining Order/Preliminary Injunction/Payment of Money to Restore Trust
1/13/15	Brenda Jean Eiland v. SHRS et al.	Chancery Court-Jackson County	Temporary Restraining Order/Declaratory Relief