

Solutions to the Church Plan Problem:

1. Follow the Trend and Switch to Defined Contribution Plans
 - a. “In spite of their shortcomings, a defined contribution plan is more reliable for participants because the account balances are clear and accessible, contribution amounts can be controlled, and all employee contributions are automatically vested.”*
2. Abolish the Church Plan Exemption
 - a. Except in cases of clear and substantial entanglement with authentically religious plan sponsors.*
3. State Law Claims
 - a. Breach of Contract
 - i. “...present financial incapacity does not relieve a promisor of his original obligation to pay.”*
 - b. Tortious Breach of Contract
 - i. “...the high standard of care owed by a fiduciary is at the core of the underlying contractual relationship in every pension plan context.”*
 - c. Common Law Fraud
 - d. Intentional Infliction of Emotional Distress
4. Advocacy
 - a. “...church pension plan participants who have been backed by unions, pension advocates, and whose plans have faced negative publicity from the local press have shown the most promise in achieving a fully funded pension plan after a church pension plan failure.”*

*Citing Maria O’Brien Hylton & Sophie Esquier, *The Future of ERISA’s Church Plan Exemption After Advocate Health: Abolition or Robust State Law Contract Remedies*, N.Y.U. Rev. Emp. Benefits & Executive Compensation, Sept. 2018, at 1-1.

Their pensions are gone. Newark Archdiocese is to blame, lawsuit says.

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More than 100 retirees of the now defunct St. James Hospital of Newark are suing the Newark Archdiocese, saying they lost their pensions because the archdiocese mismanaged the fund.

As many as 135 former St. James employees were promised pensions, but the archdiocese intentionally underfunded and removed assets from the plan, resulting in it going broke, according to the lawsuit filed in Superior Court in Essex County.

Retirees, some of whom had worked for decades for the Catholic hospital, stopped receiving their pension checks in November 2017, while those who hadn't started taking payments never received any money.

"I feel personally abandoned," said Sharon Holutiak, 66, who would have received a monthly \$871 pension. "The Archdiocese of Newark should have the willingness to be up front and center, to unequivocally address the issues of underfunding, misplaced funding or even ignoring that they did indeed provide for a pension and handle it themselves."

The lawsuit recaps much of what was reported in a series of stories by [the Bamboozled column](#) when the retirees first learned the pension was going belly-up.

Prior to filing the suit, employees said they tried to get answers about the pension from the archdiocese and from Cardinal Joseph Tobin, but their [letters were ignored](#).

They said they had no choice but to file the suit, which seeks class action status, last month.

"We were trying to be fair from the get-go to communicate but we didn't get the same courtesy back," said Rich Salvia, St. James' former chief financial officer. "Hopefully, the cardinal gets involved and rights a wrong."

Charles Brennan, the former president and CEO of St. James, said the retirees don't want to "jump out and attack Tobin."

"We're trying to be fair," Brennan said. "This is probably the last opportunity for [the archdiocese] to sit down and look at this fairly and honestly as a religious organization and not as a corporate structure, so they can make a determination about what's honorable and fair."

When asked about the lawsuit, an attorney for the Newark Archdiocese said that while the archdiocese sympathizes with the retirees, the pension obligation was never part of the archdiocese pension plan and when St. James was sold in 2008, the archdiocese did not have responsibility for the plan.

Key changes to the plan

But there was a time when the archdiocese had control of the plan, the lawsuit alleges.

It alleges that when the archdiocese sold St. James, it did not transfer the pension liability to the new owner, therefore the archdiocese should be responsible for the pension.

The lawsuit claims that prior to the sale, the archdiocese made changes to the pension plan and it told retirees their pension benefits would not be affected.

In one letter cited in the suit, the archdiocese told the retirees, "The Pension Plan was fully funded and you will receive, when due, the full amount of your vested retirement benefit."

The suit alleges the archdiocese intentionally hid a change to the plan - a change that would remove federal pension insurance protections - without telling plan participants.

St. James' pension plan and other religious hospital pension plans were initially started as traditional pension plans. That meant they had to follow federal Employee Retirement Income Security Act (ERISA) rules, which include minimum funding requirements and pension insurance.

In the 1990s, the religious hospitals petitioned the IRS to reclassify the plans as "church" plans. Church plans are exempt from ERISA, saving the plans money because they wouldn't have to buy pension insurance. The IRS granted the exceptions, leaving employee pensions without guarantees or protections.

When the St. James plan was granted church status in 1996, officials told employees the pension plan was fully funded and that the change "will have no impact on your right to receive a future monthly retirement benefit from us," according to documents.

That turned out to be untrue, the lawsuit said.

Employees of other religious hospitals nationwide, worried about having uninsured pensions, tried to fight in court, claiming the hospitals never should have been granted church status. Lower courts agreed that the hospitals, including St. Peter's University Hospital in New Brunswick, should be subject to federal pension laws. But when the case made it to the [U.S. Supreme Court](#), the religious hospitals won and the pensions maintained church status.

The St. James employees were not part of that suit.

The new lawsuit makes different claims against the archdiocese, alleging breach of contract, breach of fiduciary duty and promissory estoppel - a legal principle that says a promise is enforceable by law when the promisee suffered a detriment, and the promise is one that could be reasonably relied on.

"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 lawsuit said.

The St. James employees and their pro bono attorneys are waiting for a response to the suit from the archdiocese's legal team, and they still hold out hope that Cardinal

Tobin will come to their aid.

“What’s the most disappointing is not having a response [from Tobin] and them giving us no alternative but to take the legal route,” Salvia said. “We’re just hoping everybody reevaluates after the cardinal hopefully gets involved.”

Have you been Bamboozled? Reach Karin Price Mueller at Bamboozled@NJAdvanceMedia.com. Follow her on Twitter [@KPMueller](https://twitter.com/KPMueller). Find [Bamboozled on Facebook](#). Mueller is also the founder of NJMoneyHelp.com. Stay informed and sign up for NJMoneyHelp.com's [weekly e-newsletter](#).

St. Clare's pensioners push for law preventing corp. dissolution

Earlier this year, the corporation filed for dissolution, stating they had no more money to distribute to the some 1,100 pensioners who once worked for the hospital.

St. Clare's Corporation officials have said decades of financial issues and the recession led to the plan's collapse.

The pension plan was classified as a "church plan" and as such did not have to comply with ERISA, or the Employee Retirement Income Security Act, which helps insure pension money.

Years ago, the state stepped in before St. Clare's was sold to Ellis, giving over \$28 million to help get the fund back on track.

Earlier this year, local lawmakers pushed for another \$25 million to be set aside in the state budget, about half of what would be needed to make the pensions whole again, but it didn't pass.

Lawmakers said this new bill doesn't require any funding.

"If that corporation was allowed to close, we would have virtually no chance to restore those funds or ever find out what happened," co-sponsor Assemblyman Angelo Santabarbara said. "At the very least, these pensioners deserve answers."

Tedisco and Santabarbara were joined by Senators George Amedore and Daphne Jordan, as well as Assemblymembers Phil Steck and Mary Beth Walsh.

Legislators said this session has focused heavily on downstate issues. They believe it's been ignored by many of their colleagues because it's an upstate issue.

"If 1,100 of their constituents from the majority leader in the Senate and the speaker of the Assembly and my colleagues in both majorities were going to lose their pension system, this bill for transparency to find out why it was happening would've been passed a month ago," Tedisco said.

Santabarbara said he's frustrated with the lack of response from Governor Andrew Cuomo.

"I've written numerous letters, I carry the letters with me here, numerous letters to the governor's office, not even an acknowledgment that the letters were received, no answer, no response," Santabarbara said. "Everyone in this building, if they're not concerned with this, they should be concerned with this because it could happen anywhere."

St. Clare's Committee Co-Chairs Mary Hartshorne and Bob Bradley said many retirees are struggling without their pension checks. Many of them stopped receiving any money back in February.

"They are hurting," Bradley said. "I've been contacted by quite a few who are financially suffering. There have been a few people who are considering selling their homes or making other sacrifices making other life choices that they shouldn't be having to make at this point."

Hartshorne said they haven't heard from Bishop Edward Scharfenberger about a possible source of funding since their last meeting three weeks ago.

"The word that he had given us was that he was actively working with a couple of different funds," she said. "He did not specifically say [Mother] Cabrini, although I'm sure that's one of them."

Lawmakers will have until Wednesday to get the bill out of committee for a vote, something Tedisco and Santabarbara believe is possible.

If you'd like to help St. Clare's pensioners, you can visit their website and sign [their petition](#). They have also started a [GoFundMe page](#).

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