



West Virginia E-Filing Notice

CC-31-2013-C-978

Judge: Perri J. DeChristopher

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NOTICE OF FILING

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
STEVEN RICHARDS v. UNITED HOSPITAL CENTER INC
CC-31-2013-C-978

The following order - motion was FILED on 2/19/2026 10:05:33 AM

Notice Date: 2/19/2026 10:05:33 AM

Donna J. Hidock
CLERK OF THE CIRCUIT COURT
Monongalia County
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MORGANTOWN, WV 26505

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In the Circuit Court of Monongalia County, West Virginia

STEVEN RICHARDS,
Plaintiff,

v.

Case No. CC-31-2013-C-978
Judge Perri J. DeChristopher

UNITED HOSPITAL CENTER INC,
Defendant

Order Granting Joint Motion for Certification of Settlement Class and Preliminary Approval of Class Action Settlement

On a previous date, the Plaintiff, Steven Richards, individually and on behalf of all others similarly situated, by and through their counsel, David E. Goddard, of Goddard Law, and Richard A. Monahan, of Bordas & Bordas Attorneys, PLLC; also comes the Defendant, United Hospital Center, Inc. (hereinafter “United Hospital Center” or “Defendant”), by and through its counsel, Marc E. Williams and Robert L. Massie, of Nelson Mullins Riley & Scarborough LLP, filed a Joint Motion for Certification of Settlement Class and Preliminary Approval of Settlement.

The Parties contend that the proposed settlement provides substantial benefits to the Settlement Class, resolves substantial issues without further prolonged litigation and attendant expense, eliminates the inherent risk of litigation, and is fair, reasonable, and adequate.

For background purposes, the Court notes the following:

1. Plaintiff requested copies of Steven Richards’ medical records from Defendant during the relevant class period. An invoice was sent to Plaintiff’s counsel which charged an amount which was allegedly in excess of the amount permitted by statute, namely W. Va. Code § 16-29-2. Specifically, Defendant charged Mr. Richards, as well as all members of the proposed Settlement Class a per page fee of \$0.40 per page plus a \$10.00 search fee,

regardless of Defendant's actual costs to produce the same.

2. On September 10, 2013, Plaintiff filed a Class Action Complaint against Defendant United Hospital Center, Inc. in the Circuit Court of Harrison County.

3. The Class Action Complaint sought damages for allegedly overcharging for records at United Hospital Center during the Class Period.

4. The parties engaged in significant discovery and motion practice, including a Motion to Dismiss the Complaint.

5. The Court notes that on September 12, 2013, Plaintiff filed Plaintiff's First Set of Discovery Requests to Defendant.

6. The Court notes that in Responses to Plaintiff's First Set of Discovery Requests dated October 25, 2013, Defendants advised Plaintiffs that all records from 2008, 2009, 2010, and the early part of 2011 were unretrievable due to a change in Defendant's record storage software. However, Defendant's records indicated that it received 6,137 requests for medical records for the time period from May 15, 2011 through December 31, 2011, 16,545 requests for medical records were received for 2012, and 13,933 requests for medical records were received for the time period from January 1, 2013 through October 15, 2013.

7. This case was transferred to the Circuit Court of Monongalia County for consolidation with Civil Action No. 13-C-53, styled *Christopher Thomack and Joseph Michael Jenkins, on their own behalf and on behalf of all other similarly situated persons consisting of a class of aggrieved persons, v. West Virginia University Hospitals, Inc., and West Virginia United Health System, d/b/a WVU Healthcare and any related entitled of WVU Healthcare acting in concert with WVU Healthcare*.

8. Extensive motions practice occurred before the Circuit Court of Monongalia County relating to the propriety of these cases, as well as other cases against various West

Virginia United Health System controlled entities, being consolidated.

9. On May 20, 2016, this Court issued its Order ruling that consolidation of this case with the *Thomack* matter was improper.

10. Plaintiffs filed a Motion to Reconsider that ruling and appeared for a hearing on November 14, 2016.

11. In an Order dated November 17, 2016, this Court denied the Motion for Reconsideration and ordered the transfer of this case back to the Circuit Court of Wood County.

12. This case sat largely dormant for a period of years while the *Thomack* matter proceeded under the assumption that much of the discovery and arguments in *Thomack* would apply equally to the issues in this lawsuit.

13. The Court notes that in early 2024, Counsel for Plaintiff and Defendant engaged in ongoing discussions trying to determine whether all of the invoices might be recoverable. During the course of those discussions, it came to light that Defendant was not able to retrieve prior invoices. Defendant was able to confirm that it received 6,137 requests for medical records for the time period from May 15, 2011 through December 31, 2011, 16,545 requests for medical records for 2012, and 13,933 requests for medical records for the time period from January 1, 2013 through October 15, 2013.

14. The Court notes that this revelation created issues for counsel to consider since Plaintiff's counsel must consider how it could protect the putative class members by providing adequate notice and an opportunity to be heard.

15. The Court notes that after much contemplation and being mindful of the significant time lapse between the alleged overcharging and the administration of any potential settlement, Plaintiff's counsel felt it was important to try to resolve the case through a negotiated settlement to avoid additional delay.

16. The Court notes that Plaintiff's counsel reached out about the possibility of resolving the case, understanding that there would be difficulties in providing meaningful notice and proof of claims.

17. The Court notes that on December 9, 2024, Plaintiff's counsel sent a letter with a proposed methodology to compute any potential claims and payouts, as well as to provide the best notice feasible under the circumstances. That letter also proposed the use of a *cy pres* fund which they believed was necessary because of the spoliation of evidence that occurred in this case.

18. The Court notes that Defense counsel recognized the various issues that arose as result of the lack of information regarding the medical records requests, and agreed that mediation would be the best option for all parties to potentially resolve these complicated issues.

19. The Court notes that the parties appeared for a full day of mediation with Charles Piccirillo in Morgantown on June 2, 2025. While the parties worked diligently to resolve certain disagreements, the mediation was not successful.

20. The Court notes that following the formal mediation, negotiations continued.

21. The Court notes that counsel for Defendant advised that 26,877 patients were seen at Defendant's hospital during the class period. Of those, we have no way of knowing which ones (or how many) may have requested copies of their medical records.

22. The Court notes that Plaintiff and Defendant continued to work diligently toward a negotiated resolution, with each side sending at least five additional demands and counter offers between June 5, 2025 and September 16, 2025.

23. The Court notes that after months of negotiations, the parties agreed to terms on a proposed settlement on September 16, 2025.

24. The Court notes that, while each of the Parties believes that the legal

position which has been asserted on their behalf is meritorious, each is also mindful of the risks and uncertainties inherent in the continued litigation of this action and the substantial outlays of additional time and money required to fully adjudicate the claims and defenses asserted in this action, and to further litigate such appeals as may thereafter be pursued.

25. The Court notes that based on the individual assessment by the Parties of the strengths and weaknesses of their respective cases, and after full and frank discussions pertaining to the evidence likely to be adduced during the trial of this matter and the present state of the law in West Virginia, the Parties have concluded that the claims asserted herein may be most efficiently and fairly resolved by reaching a settlement providing for the certification of a Settlement Class and the resolution of the claims presented in this action by agreement.

26. The Court notes that after an analysis of the facts developed during the discovery phase of this matter as applied to the current governing law in West Virginia, the Parties concur that the key liability questions presented for adjudication in this action may be distilled to the following inquiries:

- a. Who should be included in the Class Definition?
- b. Did Defendants violate W. Va. Code § 16-29-2 by charging a per page price and a \$10.00 search fee for every medical request regardless of the actual costs incurred by Defendants in producing the same?
- c. Was there a “safe harbor” contained in the statute for any medical provider which charged less than 75 cents per page and \$10.00 search fee?

27. The Court notes that the Parties also concur that the key damages questions presented for adjudication of this action include the following:

- a. What is each Class member’s damages related to the overcharge, if any?
- b. What is the proper interest calculation for those damages?
- c. What are reasonable attorney fees and costs awardable against

Defendants pursuant to the fee shifting provision of W. Va. Code § 16-29-1(e)?

28. The Court notes that after extensive negotiations based upon respective arguments regarding these issues, the Parties reached agreement that members of the Settlement Class include:

- a. Any patient who requested medical records in writing from 09/10/2008 through 06/05/2014;
- b. “patient” will include any person who was an authorized agent or representative of patient (this includes anyone who used a medical authorization, including lawyers, insurance companies or any other person or entity who utilized a valid authorization from said patient (other than lawyers associated with Goddard Law and Bordas & Bordas); although governmental entities who requested records are explicitly excluded from membership in the Settlement Class;
- c. Fees charged for the records have been paid; and
- d. Only the individual or entity who actually paid the fee is a member of the Class.

29. In assessing the potential for an agreed resolution of the claims asserted in this action, the Court recognizes that the class action procedural device provided for under W.Va.R.Civ.P.23 was adopted with the goals of promoting economies of time, effort, and expense, uniformity of decisions, and fostering efficiency and fairness in handling large numbers of similar claims. The Court further understands that a primary function of the class action is to furnish a procedural mechanism to litigate numerous small damage claims which could not otherwise be economically adjudicated individually. The Court notes that Defendant has agreed that this matter should proceed as a class action for purposes of facilitating the Parties' Proposed Settlement Agreement, subject to its right to oppose certification in the event the Parties' Proposed Settlement Agreement is not approved.

30. The question of whether the class procedural device should be maintained rests with the Court to apply the law in this State. In exercising such review, the Court must determine that all of the prerequisites contained in W.Va.R.Civ.P.23(a) (i.e., numerosity,

commonality, typicality, and adequacy of representation) are met, and that one of the three subdivisions of Rule 23(b) is satisfied.

31. Other courts, including this Court in *Thomack* and the *Wilson* Court in the Southern District of West Virginia, have approved similar class action settlements. The rationales supporting certification of the Settlement Class in each of those cases applies equally to this Court's decision to approve a Settlement Class.

32. The Court **FINDS** that class certification is appropriate for the Settlement Class set forth in Paragraph 28, above.

33. In support of its decision to **GRANT** the Parties "*Joint Motion for Certification of Settlement Class and Preliminary Approval of Settlement*", the Court hereby **FINDS** as follows:

- a. The information and documentation developed during the discovery phase of this action and submitted by Defendants prior to engaging in settlement discussions has established that the total number of medical records requests fulfilled for Class Members during the relevant time frame is unknown as a result of the unavailability of the medical records requests or invoices. However, 26,877 patients were seen, and it naturally follows that the number of requests made, based upon similar class actions in other Courts in West Virginia, would exceed 1,000 requests, such that the "numerosity" requirement of W.Va.R.Civ.P. 23(a)(1) is met in this case.
- b. The questions of fact and law implicated by and related to the overarching liability questions presented for adjudication in this action are common to all members of the Settlement Class such that the "commonality" requirement of W.Va.R.Civ.P.23(a)(2) is met in this case.
- c. The claims asserted by Plaintiff and the claims of each member of the Settlement Class arise from essentially the same course of practice or course of conduct (i.e., the alleged overcharging for medical records by using per page charges and a \$10.00 search fee for every request rather than an individualized assessment of the actual costs incurred as required under the relevant statute); and Plaintiffs and each member of the Settlement Class will make essentially the same legal argument to prove liability such that the "typicality" requirement provided for under W.Va.R.Civ.P.23(a)(3) is met in this case.
- d. The interests of Plaintiff are aligned with the interests of the Settlement Class; and in pursuing such interests the representative Plaintiff and his counsel have proceeded with vigor and have demonstrated that they are and have been

committed to diligently pursuing the claims sought to be adjudicated in this action such that the “adequacy” requirement provided for under W.Va.R.Civ.P. 23(a)(4) is met in this case.

- e. The adjudication of the common issues in this action have important and desirable advantages of judicial economy compared to any individual issues when viewed by themselves; and the questions of law and fact common to all putative members of the Settlement Class predominate over questions affecting only individual members such that the use of the Class procedural device will provide the best method to fully and efficiently adjudicate the issues raised in this action. Other factors weighing in favor of permitting these proceedings to go forward as a class action include: (i) the relatively small dollar amount of many Class members’ individual claims, (ii) the absence of other litigation concerning medical record charges against these Defendants in West Virginia, (iii) Monongalia County, West Virginia is a forum where this case may be fully and fairly adjudicated, and, (iv) managing the settlement of the instant dispute does not present case management problems of a magnitude sufficient to prevent certification of the Settlement Class. Accordingly, the instant action may be maintained as a class action under W.Va.R.Civ.P.23(b)(3).

34. The Court hereby **ORDERS** that this matter shall be conditionally certified as a class action pursuant to W.Va.R.Civ.P.23(b)(3) for the purpose of effectuating the Parties’ Settlement Agreement, and **ORDERS** that the Settlement Class shall be defined as set forth below:

- a. Any patient who requested medical records in writing from 09/10/2008 and through 06/05/2014;
- b. “patient” will include any person who was an authorized agent or representative of patient (this includes anyone who used a medical authorization, including lawyers, insurance companies or any other person or entity who utilized a valid authorization from said patient (other than lawyers associated with Goddard Law and Bordas & Bordas); although governmental entities who requested records are explicitly excluded from membership in the Settlement Class;
- c. Fees charged for the records have been paid; and
- d. Only the individual or entity who actually paid the fee is a member of the Class.

35. The Court hereby **ORDERS** that Steven Richards shall be designated as Class Representative for the Class of Plaintiffs conditionally certified as a Settlement Class.

36. The Court hereby **ORDERS** that attorneys David E. Goddard, Goddard Law,

and Richard A. Monahan, Bordas & Bordas, PLLC, be designated as counsel for the Settlement Class.

37. The Court hereby appoints Edgar Gentle, III, of Gentle, Turner, Sexton & Harbison, LLC in Birmingham, AL, as the Claims Administrator.

38. The Court notes that under the terms of the Parties' Proposed Settlement, Defendant (or its insurer, Intact) will pay claims as approved by the agreed-upon claims administrator, Edgar Gentle, III, of Gentle, Turner, Sexton & Harbison, LLC in Birmingham, AL, up to a total of \$600,000.00, as outlined below.

39. The Parties' Proposed Settlement provides that each Class member may claim a flat \$100.00 payment, or, if the patient submits actual documentary evidence to the Claims Administrator of charges in excess of \$100.00, then the patient may claim the amount paid minus \$2.08. Claims shall be paid as follows:

1. Claimants with actual proof of payment shall be paid at full value. If those claims exceed the total amount payable (\$600,000.00), then they shall be paid pro rata; and
2. Claimants without actual proof of claim shall be paid a flat \$100.00 award, unless there is insufficient money available in the fund after paying all amounts owing for Claimants with actual proof of payment, in which case they will be paid pro rata.

40. The Court notes that Defendant or its insurer, Intact, will pay a total of \$400,000.00 into a fund to be maintained by the insurer, Intact. If the amount of the payable claims is less than \$400,000 then any remaining funds may be used by the Insurer to pay the Claim Administration costs. If there are still funds remaining after paying the payable claims and the Claims Administration costs, the rest will be a *cy pres* award to be paid to Legal Aid of West Virginia or other deserving entities as decided by the Court.

41. The Court notes that the Parties' Proposed Settlement provides that Defendant or its insurer, Intact, will bear the costs of administration.

42. The Court notes that the Parties' Proposed Settlement provides that the Class payments will be made by Defendant or its insurer, Intact, after proper submission of claims by Class members and the approval of the claim by the administrator.

43. The Court notes that the Parties' Proposed Settlement provides that the administrator's efforts to provide notice will consist of one notice to all patients from 09/10/2006 through 06/05/2014 (26,877 patients) via postcard and two notices to the Top 300 Requesters identified in the *Thomack* case, one via letter and one via postcard.

44. The Court notes that there will be a time frame of nine (9) months to submit claims, with that time frame beginning to run from the date that the Notices are sent by the Claims Administrator to the Class. The Court notes that the Settlement Administrator or his agent or outside designee will have full access to obtain information in person or remotely (with an agreed confidentiality order in place or an order crafted by the Court if no agreement can be reached) from Defendant through any means necessary (including access to medical records or bills, paper records, electronic records, or any other means that may be necessary) so that the Settlement Administrator can fulfill his obligation to send meaningful notice to as many potential Class Members as possible. Defendants have advised that they can produce social security numbers, dates of birth, and/or updated addresses electronically. The Court notes that all parties have agreed to cooperate in good faith to assist the claims administrator with the goal to receive as many completed claims forms as reasonably possible from the Class. The Court notes that Plaintiff and Plaintiff's counsel will agree to a confidentiality order regarding any confidential information they may receive.

45. The Court notes that the Parties' Proposed Settlement provides that the Class Representative, Steven Richards, will receive \$10,000.00 as an incentive award in acting as Class Representative in addition to any recovery provided to Class member, to be paid by Defendant or its insurer, Intact.

46. The Court notes that the Parties' Proposed Settlement provides that Defendant or its insurer, Intact, will not object to an award of attorneys' fees to Plaintiff of up to \$260,000.00.

47. The Court notes that the Parties' Proposed Settlement provides that Plaintiffs' counsel will not seek reimbursement of case expenses.

48. The Court further notes that the Parties agree that the notice of conditional certification of class action and preliminary approval of class action settlement to be furnished to the members of the Settlement Class shall advise each Class member of the right to be excluded from the Settlement Class by "opting out" of the Settlement Class by completing the "opt-out form" to be included with the notice. Any member of the Settlement Class choosing to "opt out" of the settlement will not receive any distribution from the settlement fund provided for under the terms of the Settlement Agreement and will otherwise not participate in the Settlement Agreement. Said notice will further advise all Class members of their right to object to the Settlement Agreement and their right to attend the Final Fairness Hearing to be conducted by the Court for the purpose of determining the fairness, reasonableness, and adequacy of all aspects of the settlement agreement.

49. After considering the lengthy history of this litigation, the various legal arguments and theories that have been presented to this Court throughout the nearly ten-year timespan this case has been on the Court's docket, and the explanations contained within the Parties' Joint Motion for Preliminary Approval of the proposed settlement, the Court hereby **FINDS** that the consideration to be paid under the Parties' Settlement Agreement is believed to be fair and reasonable; and such consideration is paid by Defendant for the purpose of completely resolving and extinguishing any and all claims against Defendant and their officers, directors, managers, agents, representatives, and employees made by each Participating Class Member of the Settlement Class.

50. The Court hereby **PRELIMINARILY FINDS** the following: (1) that the proposed settlement class membership is appropriate; (2) that the settlement methodology outlined above is appropriate; (3) that the appointment of the suggested Claims Administrator is appropriate; (4) that it is appropriate that the Defendants and/or its insurer will pay the costs associated with administration of the settlement; (5) that the payments to be made to the named Class Plaintiffs is appropriate; and (6) that the suggested amount of attorney fees to be paid to Plaintiff's counsel is fair and reasonable considering the efforts of Plaintiffs' counsel throughout the lengthy history of this case.

51. The Court understands that the Parties will move the Court for final approval of the proposed settlement and request the Court to conduct a Final Fairness Hearing to be scheduled not earlier than 150 days after the date by which final notices are required to be mailed to each class member, but as soon after such 150 day period as may be available for docketing by the Court.

52. The Court notes that the purpose of the Final Fairness Hearing will be to provide the Court with an additional opportunity to consider the terms of the proposed settlement and to furnish any member of the Settlement Class who may wish to oppose the proposed settlement with an opportunity to be heard.

53. Accordingly, the Court hereby **ORDERS** Class Counsel, in conjunction with the Claims Administrator, to provide to all members of the Settlement Class the best notice of class certification practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort as provided for under W.Va.R.Civ.P23(C)(2) in the form and plan to be approved by the Court.

The Clerk is **DIRECTED** to send a Certified copy of this Order to all counsel of record.

/s/ Perri J. DeChristopher

Circuit Court Judge
21st Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.