

CIVIL COVER INFORMATION STATEMENT
CIVIL CASES

In the Circuit Court Berkeley County, West Virginia

I. CASE STYLE:

Plaintiff(s)

RUSSELL G. BINDER,
on his own behalf and on behalf of all other
similarly situated persons consisting of a
class of aggrieved persons

Case # 15-C- 530

Judge Yoder

** Plaintiff will arrange for service of a
Summons and a copy of the Complaint upon
each of the Defendants.

vs.

Defendant(s)

THE CHARLES TOWN GENERAL HOSPITAL,
d/b/a, JEFFERSON MEDICAL CENTER

Days to

Answer

Type of Service

30

**

CITY HOSPITAL, INC.,
d/b/a, BERKELEY MEDICAL CENTER

30

**

WEST VIRGINIA UNIVERSITY HOSPITALS,
INC., WEST VIRGINIA UNITED HEALTH
SYSTEM, INC., and WEST VIRGINIA
UNIVERSITY MEDICAL CORPORATION, all
doing business as WVU Healthcare and other trade
names, and any related entities of these Defendants
acting in concert with them

30

**

Original and

copies of complaint furnished herewith.

PLAINTIFFS:	RUSSELL G. BINDER	CASE NUMBER:
DEFENDANTS:	THE CHARLES TOWN GENERAL HOSPITAL, d/b/a JEFFERSON MEDICAL CENTER, et al	15-C-_____

II. TYPE OF CASE:

TORTS	OTHER CIVIL	
☐ Asbestos	☐ Adoption	☐ Appeal from Magistrate Court
☐ Professional Malpractice	☒ Contract	☐ Petition for Modification of Magistrate Sentence
☐ Personal Injury	☐ Real Property	☐ Miscellaneous Civil
☐ Product Liability	☐ Mental Health	☐ Other
☒ Other Tort	☐ Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): unknown / _____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESS IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: David J. Romano (Bar No. 3166)
 Firm: Romano Law Office
 Address: 363 Washington Avenue
Clarksburg, West Virginia 26301
 Telephone: 304-624-5600

Representing:
☒ Plaintiff ☐ Defendant
☐ Cross- Complainant ☐ Cross-Defendant

Dated: September 24, 2015
David J. Romano
 Signature

☐ Pro Se

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

BERKELEY COUNTY CIRCUIT CLERK
2015 SEP 25 PM 2:53
VIRGINIA A. SIME CLERK

RUSSELL G. BINDER,
on his own behalf and on behalf of all other
similarly situated persons consisting of a
class of aggrieved persons,

Plaintiff,

v.

Civil Action No. 15-C-530

Judge Yoder

**THE CHARLES TOWN GENERAL HOSPITAL,
d/b/a, JEFFERSON MEDICAL CENTER,
CITY HOSPITAL, INC., d/b/a, BERKELEY MEDICAL CENTER,
WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,
WEST VIRGINIA UNITED HEALTH SYSTEM, INC., and
WEST VIRGINIA UNIVERSITY MEDICAL CORPORATION,** all doing business
as WVU Healthcare and other trade names, and any
related entities of these Defendants acting in concert with them,

Defendants.

COMPLAINT

PARTIES:

1. Plaintiff, Russell G. Binder, is a resident of Jefferson County, West Virginia.
2. Defendant, City Hospital, Inc., d/b/a, Berkeley Medical Center, is a domestic corporation operating in Berkeley County, West Virginia and the surrounding area with its principal place of business in Berkeley County, West Virginia and is a related entity of Defendants, West Virginia United Health System, Inc., West Virginia University Medical Corporation and West Virginia University Hospitals, Inc., [hereinafter sometimes referred to as collectively as "WVU"];¹
3. Defendant, The Charles Town General Hospital, d/b/a, Jefferson Medical Center, is a domestic corporation operating in Jefferson County, West Virginia and the surrounding area, with its principal place of business in Jefferson County, West Virginia

¹ See attached as "Exhibit 1" West Virginia United Health System, Inc.'s corporate chart.

and is a related entity of Defendants, West Virginia United Health System, Inc., West Virginia University Medical Corporation and West Virginia University Hospitals, Inc., [hereinafter sometimes referred to collectively as "WVU"];

4. Defendants, West Virginia United Health System, Inc., West Virginia University Hospitals, Inc., and West Virginia University Medical Corporation, are domestic corporations, with their principal place of business in Marion and Monongalia Counties, West Virginia and they collectively do business as "WVU" as other various trade names, along with their related entities who act in concert with them,.

5. WVU is an umbrella entity which controls directly and indirectly, and/or represents itself to control directly and indirectly, its other members, including but not limited, to WVU Hospitals/Ruby Memorial Hospital and various related entities, United Hospital Center, Inc., Berkeley Medical Center, Jefferson Medical Center and Camden-Clark Medical Center; all of which charge for copying medical records; alternatively, WVU is the actual or ostensible agent of each such entity and other related entities identified above.

6. Jurisdiction and venue are proper in this Court as Defendant Berkeley Medical Center's principle place of business is in Berkeley County and the cause of action accrued in Berkeley County.²

BACKGROUND

7. Plaintiff Russell G. Binder, suffered injuries and damages requiring him, through his authorized representatives, to seek copies of his medical records from both Berkeley Medical Center and Jefferson Medical Center in early 2014 where he had sought treatment for his injuries.

² There is pending in Monongalia County Circuit Court a class action involving some of the same parties and the same issues who are Defendants in this case and which was first filed in Monongalia County which may require that this case be consolidated with the Monongalia County case; simultaneously with the filing of this Complaint a Motion for consolidation has been filed in the Monongalia County case.

8. Plaintiff's authorized representative was required by Jefferson Medical Center to pay, on behalf of Plaintiff, \$2,172.93 for a paper copy of Plaintiff's medical records at a charge of \$.75 per page and this violated West Virginia law, but it is believed that such medical records were available on computerized disc which should have resulted in a charge of no more than \$25.00, since December 2007; Plaintiff paid this charge as he had no choice as he had to have his medical records to pursue his claims which had significant consequences if delayed.

9. Plaintiff's authorized representative was required to pay by Berkeley Medical Center, on behalf of Plaintiff, \$283.43 for a paper copy of Plaintiff's medical records at a charge of \$.75 per page and this violated West Virginia law; but it is believed that such medical records were available on computerized disc which should have resulted in a charge of no more than \$25.00, since December 2007; Plaintiff paid this charge as he had no choice as he had to have his medical records to pursue his claims which had significant consequences if delayed.

SUBSTANTIVE CAUSES OF ACTION ALLEGED AGAINST THE DEFENDANTS

10. The Defendants Jefferson and Berkeley Medical Centers charged Plaintiff \$0.75 "per page" for copies of his already existing medical records, whether produced in paper form or electronic form by them. All Members of the Class have been treated similarly when requesting copies of their medical records, or when generically requesting their medical records without specifying the form of production, and all the Defendants, including WVU and its related entities, have produced such records in paper form when electronic copying was available and more reasonable in costs and all exceeded costs allowed by law. Defendant WVU, and its related entities, have concealed from individuals the most cost effective manner to receive such copies and these Defendants have charged unreasonable copying fees in violation of West Virginia law.

11. The unlawful charges by all of the Defendants violated the then existing West Virginia Code §16-29-1 et seq.³ wherein §2(a) of Article 29 stated that “The provider shall be *reimbursed* by the person requesting in writing a copy of the records at the time of delivery *for all reasonable expenses incurred in complying with this Article*; provided, that the cost may not exceed \$0.75 per page for the copying of any record or records which have already been reduced to written form and a search fee may not exceed \$10.00.” (emphasis added). Such conduct of Defendant WVU also violated the common law by breaching an express contract or implied contract to charge only a reasonable fee as contemplated by the Statute. Such conduct also violated the public policy of this State as expressed in the Statute and in other statutory law and the common law.

12. By overcharging Class Members for paper copies at a “per page” rate, the Defendants, and their related entities, violated §16-29-2 and committed fraud as well as by intentionally violating such statutory provisions and the common law.

13. The Defendants, and their related entities, concealed, suppressed and omitted material facts to the Class Members with the intent that the Class Members would rely upon the same in connection with the sale of goods and services, which conduct is prohibited by the West Virginia Consumer Credit Protection Act, West Virginia Code §46A-6-101 et seq.

14. To the extent that the Defendants, and their related entities, engaged in such a scheme and artifice to misrepresent to Class Members the accurate cost for their medical records, it violated West Virginia law.

15. At all times complained of herein, the Defendants’ agents, servants and/or employees were acting for and on the behalf of the Defendants, and were therefore agents, ostensible agents, or otherwise created vicarious liability for the Defendants for

³ The statute was amended in 2014 effective June 6, 2014, and the claims asserted herein are for unlawful conduct prior to the 2014 Amendment.

whom these agents, servants and/or employees were acting, as all were within the course and scope of their agency.

16. At all times complained of herein, the Defendants were acting as a conspirator with unnamed persons, firms and corporations, including their related entities, in common goals, schemes and designs for the purpose as herein alleged and complained of.

17. At all times complained of herein, Defendants entered into a joint venture with others and with unnamed persons, firms and corporations, including its related entities, for purposes as herein alleged and complained of.

18. As a proximate result of the unlawful conduct of the Defendants, and their related entities, the Plaintiff Class was damaged by being overcharged, by being billed for services and/or things for which they should not have been required to pay, and by incurring charges and expenses that were concealed and misrepresented to the Class, all being a deceptive practice under the law.

19. The acts and conduct of the Defendants, and their related entities and others, were done intentionally and with a reckless disregard for the rights of the Plaintiff Class entitling the Plaintiff and the Class to punitive damages for all causes of action alleged herein.

CLASS REPRESENTATION ALLEGATIONS

20. Pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, Plaintiff brings this claim on his own behalf and on behalf of all persons who: (1) requested copies of some or all of their medical records from the Jefferson and Berkeley Medical Centers during the class time period and those other Defendants controlling Jefferson and Berkeley Medical Centers, or which had the authority to control them, and any of their related entities, and (2) paid charges for such medical records in excess of the amount permitted

under West Virginia statutory and common law, including W.Va. Code §16-29-1, as existing at all relevant times.

21. This civil action is an appropriate case to be brought and prosecuted as a class action by Plaintiff against these Defendants pursuant to Rule 23 of the West Virginia Rules of Civil Procedure.

22. This Class consists of those persons who requested copies of medical records from Defendants Jefferson and Berkeley Medical Centers during the class time period, directly or through an authorized agent or representative to whom authority was given to such authorized agent or representative to request and receive such medical records, and who was charged or attempted to be charged the unlawful fees by Defendants Jefferson and Berkeley Medical Centers during the class time period, all of which was contrary to the statutory and common law of this State.

23. Plaintiff alleges, upon information and belief, that the number of Class Members is so numerous that joinder of all of them is impractical as each time that a request was made for medical records and an unlawful charge was made or attempted to be made such was a violation of West Virginia Law and public policy.

24. The identity of the Class should be easily ascertained from the records of the Defendants when discovery commences herein.

25. The principle injuries resulting from the alleged conduct of the Defendants, and their related entities, occurred entirely in the State of West Virginia through the unlawful conduct of the Defendants.

26. The claims asserted herein will be governed by the laws of the State of West Virginia, which has a distinct nexus with the Class Members as the majority of all proposed Plaintiff Class Members reside in West Virginia where the alleged harm and alleged wrongful conduct by the Defendants occurred.

27. The total amount of damages sought by the Class is unknown at this time

as discovery is needed to determine the probable amount of such damages and the contours of the Defendants' willfulness and intent.

28. At all times complained of herein, Defendants, and their related entities, were acting by and through their agents, servants, employees, co-conspirators and/or joint venturers.

29. The legal issues presented in this class action are common to all Class Members as determination by the Court or jury of the reasonableness of the charges pursuant to West Virginia statutory law and common law, is the same for every Class Member.

30. Likewise, the factual issues presented in this class action are also common to all Class Members as they all requested copies of their medical records from the Defendants, and if some Class Members requested paper copies rather than electronic copies, or other requests, these distinctions may be procedurally handled with subclasses or claim form procedures as permitted by Rule 23.

31. The claims of Plaintiff are typical of the claims of the Class, and the Plaintiff will fairly and adequately protect the interests of the Class with respect to the appropriate common issues of fact and law and have hired counsel competent to prosecute said action for and on behalf of the Plaintiff and the Class.

32. The prosecution of this civil action by all Class Members in separate actions would create a risk of varying adjudications with respect to individual Members of the Class, could be dispositive of interests of other Members of the Class not parties to such actions, and/or such separate actions may impair or impede their ability to protect their interests where the Defendants have acted or refused to act on grounds generally applicable to the Class making declaratory or injunctive relief appropriate for the whole Class.

33. The Class includes hundreds of aggrieved persons in West Virginia who have

been intentionally overcharged for medical records by the Defendants and the Class is, therefore, so numerous that joinder of all Members is impracticable.

34. There are questions of law and facts common to the Class, including, but not limited to, the following:

- (a) whether the charges by the Defendants violated West Virginia Code §16-29-1;
- (b) whether the charges by the Defendants violated West Virginia common law, the public policy of this State and breached the express and implied contract with the Class;
- (c) whether Defendants violated West Virginia Code §46A-6-101 *et seq.* by, on a class wide basis, misrepresenting facts, being deceptive and unfairly charging the Class for goods and services when selling to them copies of their medical records;
- (d) whether Defendants acted intentionally and/or fraudulently by deliberately overcharging the Class, amounts that were clearly unlawful under the law;
- (e) whether the Class is entitled to punitive damages from Defendants for their intentional and/or fraudulent conduct; and,
- (f) such other factual and legal issues as are apparent from the allegations and causes of action alleged herein that may become known as discovery progresses.

35. The interest and benefits of the Class as to joint resolution of common questions of law and fact outweighs the benefit of individually controlling the prosecution of multiple separate actions by each Class Member.

36. The difficulties in management of this case as a class action are outweighed by the benefits it has with respect to disposing of common issues of law and fact because of the large number of Class Members, and it is desirable to concentrate the litigation in one forum for the management of this civil action due to such numerosity of Class claimants.

37. There are many individuals in the proposed Class whose claims may be so small that the individual prosecution theory would not be economically feasible.

38. The individually named Plaintiff is a Member of the Class he seeks to

represent, and therefore, will provide adequate representation for the Class.

39. Counsel for the Class as identified herein have experience as primary counsel in other class actions, including having participated as lead counsel or co-lead counsel in several similar class action cases, and some Class counsel currently have pending several such matters at the present time in other Courts in this State, including the Circuit Court of Monongalia County.

RELIEF SOUGHT

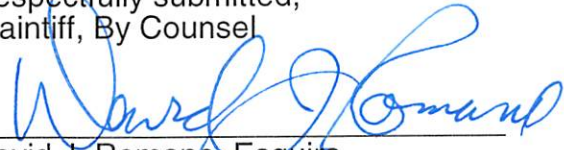
WHEREFORE, the Plaintiff and the Class he seeks to represent, demands he be awarded damages, injunctive relief and other affirmative relief, jointly and severally, from the Defendants, and their related entities, as follows:

- (a) A finding by the Court that this is an appropriate action to be prosecuted as a class action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, and that the Court finds that Plaintiff is an adequate representative of the Class and that his counsel are qualified to represent the Class, and that this action shall proceed as a class action on the common issues of law and fact, all as this Court deems just and proper;
- (b) Damages as provided for under West Virginia Code §46A-6-101 et seq. including penalties, punitive damages, attorneys' fees and costs as provided therein;
- (c) Compensatory and general damages in amounts to be determined by the Court and the jury pursuant to West Virginia law;
- (d) Exemplary damages;
- (e) Injunctive relief prohibiting retaliatory conduct or future violation of the statute;
- (f) Disgorgement of profits from any illegal conduct;

- (g) The costs and disbursements of this action, including reasonable attorneys' fees;
- (h) Prejudgment and post judgment interest; and
- (i) Such other further and general and specific relief, as the Court or jury finds just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL
MATTERS IN THIS COMPLAINT.**

Respectfully submitted,
Plaintiff, By Counsel

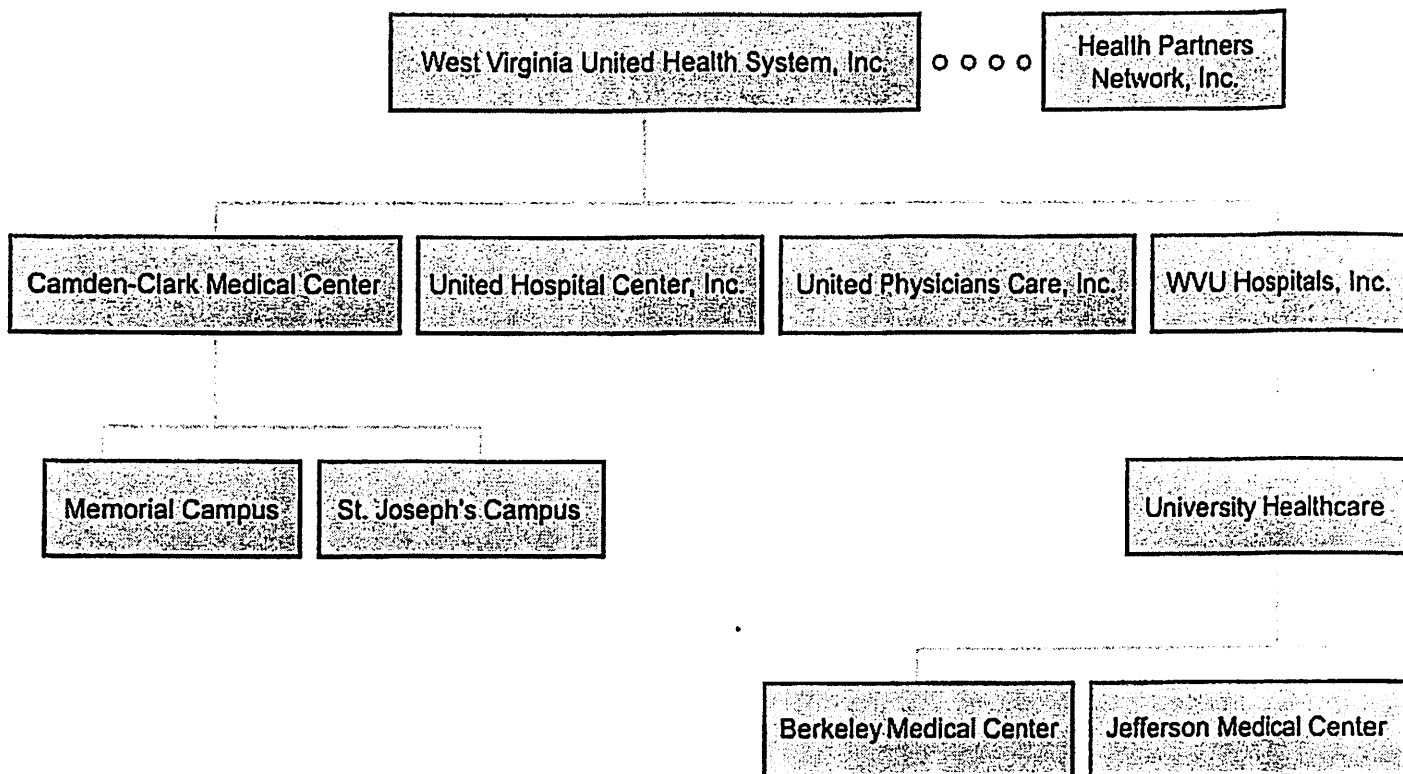


David J. Romano, Esquire
W.Va. State Bar ID No. 3166
ROMANO LAW OFFICE
363 Washington Avenue
Clarksburg, West Virginia 26301
(304) 624-5600

and



D. Michael Burke, Esquire
W.Va. State Bar ID No. 550
Burke, Schultz, Harman & Jenkinson
P.O. Box 1938
Martinsburg, WV 25402-1938
(304) 263-0900



West Virginia United Health System, Inc website retrieved January 6, 2014

<http://www.wvunitedhealthsystem.org/wvuh/System-Members>