

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JAMES F. SMITH, and
JOHN E. SMITH, as Co-Executors of
the ESTATE OF DONALD E. SMITH,
and on behalf of all others similarly situated,

PLAINTIFFS,

v.

CIVIL ACTION NO. 14-C-829
JUDGE JASON WHARTON

CAMDEN-CLARK MEMORIAL
HOSPITAL CORPORATION,

DEFENDANT.

**JOINT MOTION FOR CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY APPROVAL OF SETTLEMENT**

NOW COME the Plaintiffs, James F. Smith, and John E. Smith, as Co-Executors of the Estate of Donald E. Smith, 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, Camden-Clark Memorial Hospital Corporation (hereinafter "Defendant"), by and through their counsel, Thomas J. Hurney, Jr. and Caroline G. Massie, of Jackson Kelly PPLC, and state that the Parties have reached an agreement to settle all claims asserted in the above-captioned action against Defendant, subject to review and approval by this Court. 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. Accordingly, the Parties submit the following Joint Motion for Certification of Settlement Class and Preliminary Approval of Settlement.

I. **MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS**

For the Motion for Certification of a Settlement Class, the Parties state as follows:

1. Plaintiffs requested copies of Donald Smith's medical records from Defendant during the relevant class period. An invoice from Defendant's third-party provider submitted an invoice to Plaintiffs dated July 9, 2012, which charged 75 cents per page and a \$10.00 search fee, irrespective of the actual costs incurred by Defendant in producing the medical records request, even when such medical records were available in electronic format. The July 9, 2012 invoice totaled \$793.41 for production of Donald Smith's medical records. Plaintiffs paid the invoices in order to obtain the medical records.

2. Plaintiffs submitted a second request for copies of Donald Smith's medical records from Defendant during the relevant class period. An invoice from Defendant's third-party provider submitted an invoice to Plaintiffs dated September 17, 2013, which charged 75 cents per page and a \$10.00 search fee, irrespective of the actual costs incurred by Defendant in producing the medical records request, even when such medical records were available in electronic format. The September 17, 2013 invoice totaled \$961.16 for production of Donald Smith's medical records. Plaintiffs paid the invoices in order to obtain the medical records.

3. On March 21, 2014, Plaintiffs filed a Class Action Complaint against Defendant Camden-Clark Memorial Hospital Corporation and Records Imaging & Storage, Inc., which was a third-party contractor for Defendant Camden-Clark, in the Circuit Court of Wood County.

4. The Class Action Complaint sought damages for overcharging for records at both Camden Clark Memorial Hospital Corporation and St. Joseph's Hospital during the Class Period.

5. The parties engaged in significant discovery and motion practice.
6. Defendant Records Imaging & Storage, Inc. sought leave to file a Third-Party Complaint for Declaratory Relief against its insurance carriers, Westfield Insurance Company and Philadelphia Indemnity Insurance Company.
7. Extensive motions practice ensued related to the insurability issues relating to Records Imaging & Storage, Inc.
8. 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*.
9. Again, 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.
10. Plaintiffs stipulated to the dismissal of Defendant Records Imaging & Storage, Inc. because it was uninsured and insolvent, and an Order reflecting the same was signed by this Court on March 7, 2016.
11. On May 20, 2016, the Circuit Court of Monongalia County issued its Order ruling that consolidation of this case with the *Thomack* matter was improper.
12. Plaintiffs filed a Motion to Reconsider that ruling and appeared for a hearing on November 14, 2016.
13. In an Order dated November 17, 2016, the Circuit Court of Monongalia

County denied the Motion for Reconsideration and ordered the transfer of this case back to the Circuit Court of Wood County.

14. On December 15, 2016, Plaintiffs filed their Motion for Class Certification with attached Memorandum of Law in Support of the Motion for Class Certification.

15. Defendant Camden Clark Medical Center filed its opposition to Motion for Class Certification, and Plaintiffs filed their Reply.

16. Prior to ruling on that motion, Defendant Camden Clark Medical Center moved the Court to stay this action pending the resolution of a proposed settlement pending in the case of *Wilson, et al. v. MRO Corporation, CIOX Health, LLC, and Medi-Copy Services, Inc.*, in the Southern District of West Virginia which would potentially include some of the claimants in this case.

17. Plaintiffs argued against the proposed stay, but the Court nevertheless entered an Order staying this case pending the resolution of the *Wilson* matter.

18. Plaintiffs' counsel filed a motion asking the Court to lift the stay on October 3, 2018.

19. Defendant responded on January 7, 2019 opposing the motion.

20. The Court issued an Order denying the Plaintiff's Motion to Lift Stay.

21. The resolution of the *Wilson* case was cumbersome, and Plaintiffs' counsel herein attempted to intervene to protect its clients in this case.

22. Mediation occurred in the *Wilson* case, and the undersigned counsel appeared for the proposed intervenors involved in this lawsuit. Those members of the proposed *Wilson* settlement class which were also putative members of this class action obtained a separate settlement which was significantly more beneficial to the class members than the settlement

obtained on behalf of the non-WVU entity class members in *Wilson*.

23. Discovery conducted in the *Thomack* case was relevant to this lawsuit as well. Specifically, Melissa Martin, Director of Health Information Management for West Virginia University Hospitals was deposed on August 13, 2019 in the *Thomack* case.

24. Plaintiffs in *Thomack* obtained records produced by Defendants West Virginia University Hospital and West Virginia United Health System in responding to similar records requests from 06/05/2014 through 07/31/2014, under a version of the statute that was substantially similar to the statute at issue for the Class.

25. Importantly, the charges made by Defendants West Virginia University Hospital and West Virginia United Health System under the later statute were made based upon a “cost study” which accurately estimated the costs actually incurred in producing the medical records under the newer version of the statute.

26. Deposition testimony in the *Thomack* case established that the actual costs incurred during the class period could not be calculated on an individual basis because the “[s]ystems have changed, locations of records have changed, staff has changed.” Depo. of Melissa Martin, at p. 37.

27. However, the deposition testimony in the *Thomack* case also established that the cost study was transferrable to the time frame at issue during the Class period. Deposition Transcript of Rule 30(b)(6) witness Christine Metheny, at p. 60.

28. While this case is still technically stayed, the parties agreed to engage in a separate mediation on February 6, 2025 before mediator Charles S. Piccirillo in an effort to resolve the disputes between the remaining Plaintiffs (those not part of the *Wilson* Federal Court settlement with CIOX Health, LLC) and Defendant Camden Clark Medical Center.

29. The mediation took an entire day and eventually resolved using a framework very similar to that utilized in the *Thomack* case against West Virginia University Hospital and West Virginia United Health System in the Circuit Court of Monongalia County.

30. The settlement terms of this case are significantly different than those obtained on behalf of the *Wilson* settlement class.

31. The differences pertain to the methodology of calculating damages and the Claims Administrator who will handle the notice and payment of claims.

32. Accordingly, the undersigned counsel believe that the two settlement groups should be administered separately since different methodologies are involved, different plaintiffs are involved, different attorneys are involved, and different Claims Administrators are involved.

33. 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.

34. 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. 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?

35. 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)?

36. 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 3/21/2009 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.

37. In assessing the potential for an agreed resolution of the claims asserted in this action, the Parties recognized 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 Parties further understand 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. Defendants have 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.

38. The Parties are cognizant that it is not their decision as to whether this matter should proceed as a class action; but rather, 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.

39. Other courts, including the *Thomack* Court in Monongalia County 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.

40. In support of the instant motion for certification, the Parties respectfully

submit 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 approximately 5,293 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 Plaintiffs 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 Plaintiffs are aligned with the interests of the Settlement Class; and in pursuing such interests the representative Plaintiffs and their 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) Wood 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).

WHEREFORE, the Parties request the Court to:

- A. Conditionally certify this matter as a class action pursuant to W.Va.R.Civ.P. 23(b)(3) for the purpose of effectuating the Parties’ Settlement Agreement, and order that the Settlement Class be defined as set forth below:

- a. Any patient who requested medical records in writing from 3/21/2009 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.

The Parties' Motion for Certification of a Settlement Class in this action is made with the express understanding that if the Parties' Settlement Agreement is not approved by a final order of Court, any order of class certification for settlement purposes shall be null and void and of no further effect with respect to any party to this action, and the Parties shall be returned to the status each occupied before the filing of the Joint Motion for Certification of Settlement Class without prejudice. The Parties are also in agreement that in the event the proposed settlement is not approved by a final order of Court, nothing contained herein shall be construed or used as an admission, concession, or declaration by or against either party as to any finding with respect to class certification or for any fault, wrongdoing, or breach of liability; nor shall anything be construed as an admission by either party with respect to the merit or lack of merit of any claim asserted in the action or the defense to any claim asserted in the action.

B. Designate James F. Smith and John E. Smith, as Co-Executors and on behalf of the Estate of Donald E. Smith, as Class Representatives for the Class of Plaintiffs conditionally certified as a Settlement Class.

C. Order that attorneys David E. Goddard and Richard A. Monahan be designated as counsel for the Settlement Class.

D. Direct 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.P. 23(C)(2) in the form and plan to be approved by the Court.

II. MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

Plaintiffs, Defendants, and their respective counsel have been able to reach a settlement agreement in the above-captioned matter after entering into and concluding significant arm's-length settlement negotiations with the assistance of mediator Charles S. Piccirillo. The Parties acknowledge that before any settlement agreement may become effective, the Class for whose benefit such settlement has been effectuated is required to be certified by this Court, and such proposed settlement is required to be submitted for the Court's consideration and approval consistent with the provisions of W.Va.R.Civ.P. 23(e). The Parties have agreed to work together, in good faith, to secure such approval, and hereby respectfully move the Court for conditional approval of the Parties' proposed settlement as follows:

a. Under the terms of the Parties' Proposed Settlement, Defendants (or their 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 \$530,000.00, which for purposes of this settlement includes both overcharges and interest (but not attorney fees or claim administration costs), with interest being calculated on the individual claims at 5.5% per annum, simple interest, beginning on January 1st of the year following the overcharge;

b. The Parties' Proposed Settlement provides that, depending on the total

number of Class members, each Class member will get his/her/its prorated portion of the overcharges (computed by using the actual invoiced amount minus \$2.08) and interest calculated as set forth above in the preceding paragraph, as follows:

1. If between 1% and 25% of requestors file claim forms approved by the administrator (“take rate”), he/she/it will receive 100% of his/her/its overcharges and interest (assuming there is sufficient money in the fund to do so);
2. If the participation rate is 25.01% to 50%, he/she/it will receive 75% of the overcharges and interest (assuming there is sufficient money in the fund to do so);
3. If the participation rate is 50.01% to 100%, he/she/it will receive 50% of the overcharges and interest (assuming there is sufficient money in the fund to do so);
4. If there are more approved claims eligible for redemption which, with interest, exceed the maximum settlement fund of \$530,000.00, then each will receive his/her/its proportionate share of the total settlement fund;

c. The Parties’ Proposed Settlement provides that Defendant or its insurer, Intact, will bear the costs of administration;

d. 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 (“redemption”) based upon the redemption percentages set forth above;

e. The Parties’ Proposed Settlement provides that the administrator’s efforts to provide notice will mirror the process utilized in Civil Action No. 13-C-53, *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.*

f. 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 first Notices (i.e. first attempt) is sent by the Claims Administrator to the Class. 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. All parties agree 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. Plaintiffs will agree to a confidentiality order regarding any confidential information they may receive;

g. The Parties' Proposed Settlement provides that the two Class Representatives, James F. Smith, and John E. Smith, will receive \$10,000.00 each as incentive awards in acting as Class Representatives in addition to any recovery provided to Class members, to be paid by Defendant or its insurer, Intact;

h. 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 \$220,000.00;

i. The Parties' Proposed Settlement provides that Plaintiffs' counsel will not seek reimbursement of case expenses.

j. The Parties further 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.

k. The consideration to be paid under the Parties’ Settlement Agreement is believed to be fair and reasonable; and such consideration is paid by Defendants for the purpose of completely resolving and extinguishing any and all claims against Defendants and their officers, directors, managers, agents, representatives, and employees made by each Participating Class Member of the Settlement Class.

l. In the event the Court grants the instant Motions for Certification of a Settlement Class and Motion for Preliminary Approval of the Settlement Agreement, 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 60 days after the date by which final notices are required to be mailed to each class member, but as soon after such 60 day period as may be available for docketing by the Court.

m. 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.

n. In the event the proposed settlement does not receive the Court's final approval, nothing contained therein shall be construed or used as an admission, concession, or declaration by or against either party as to any finding with respect to class certification or for any fault, wrongdoing, breach, or liability; nor shall anything contained therein be construed as an admission.

WHEREFORE, Plaintiffs and Defendant hereby jointly request the Court to grant preliminary and conditional approval of their settlement agreement. The Parties further request the Court to find that mailing, by first class mail, to the last known address of each Class member, electronic notice by website information, and statewide newspaper publication provides adequate and sufficient notice of the conditional certification of the instant class action litigation and the Court's preliminary approval of the proposed settlement thereof to the members of the Settlement Class, and constitutes the best practicable notice given the facts and circumstances of this case.

Jointly submitted this 26th day of September, 2025.



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Counsel for Camden Clark Medical Center

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2025, I served the foregoing
“Joint Motions for Certification of Settlement Class and Preliminary Approval of Settlement”
upon counsel of record via facsimile as follows:

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