



West Virginia E-Filing Notice

CC-02-2015-C-530

Judge: Steven Redding

To: David J. Romano
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NOTICE OF FILING

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
RUSSELL G. BINDER v. THE CHARLES TOWN GENERAL HOSPITAL D/B/A JEFFERSON
MED.CENTER
CC-02-2015-C-530

The following order - case was FILED on 7/23/2025 3:33:10 PM

Notice Date: 7/23/2025 3:33:10 PM

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CLERK OF THE CIRCUIT COURT
Berkeley County
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MARTINSBURG, WV 25401

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In the Circuit Court of Berkeley County, West Virginia

RUSSELL G. BINDER,
Plaintiff,

v.

Case No. CC-02-2015-C-530
Judge Steven Redding

**THE CHARLES TOWN GENERAL
HOSPITAL D/B/A JEFFERSON
MED.CENTER,
CITY HOSPITAL, INC D/B/A
BERKELEY MEDICAL CENTER,
WV UNIVERSITY HOSPITALS,
INC,WV UNITED HEALTH SYSTEM,
INC,
West Virginia University Hospitals-
East, Inc.,
Defendants**

ORDER

THIS MATTER comes on for the Court's consideration this day, upon receipt of the July 16, 2025 Order of the Honorable Judge Jason Wharton, 4th Judicial Circuit, Wood County (attached), granting motions to consolidate the instant case from the 27th Circuit, Berkeley County, with Wood County Civil Action Number 14-C-829.

It is so ORDERED.

The Clerk shall furnish, via the West Virginia Electronic Filing System, copies of this Order to all counsel of record, close this case and retire it from the active docket.

/s/ R. Steven Redding
Circuit Court Judge
27th 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.

In the Circuit Court of Wood County, West Virginia

**JAMES F. SMITH & JOHN E. SMITH,
CO-EXECUTORS & OBO THE ESTATE
OF DONALD E. SMITH,**
Plaintiff,

v.

Case No. CC-54-2014-C-829
Judge Jason Wharton

**CAMDEN-CLARK MEMORIAL
HOSPITAL CORPORATION,**
Defendant

**ORDER GRANTING CIOX HEALTH, LLC'S AGREED-TO MOTION TO INTERVENE,
AMENDED JOINT MOTION TO CONSOLIDATE AND MOTION TO LIFT STAY AND
TO GRANT THE PREVIOUSLY FILED JOINT MOTION TO CONSOLIDATE**

On June 11, 2025, a hearing was held on three motions: (1) Ciox Health, LLC's Agreed-to Motion to Intervene; (2) Joint Motion to Consolidate; and (3) Motion to Lift Stay and to Grant the Previously Filed Joint Motion to Consolidate. Appearing before the Court were David E. Goddard of Goddard Law and Richard A. Monahan of Bordas & Bordas, PLLC, representing the Plaintiffs in this civil action, Plaintiffs James F. Smith and John E. Smith, as co-executors and on behalf of the Estate of Donald E. Smith (the "Smith Plaintiffs"); David J. Romano of Romano Law Office, representing the Plaintiffs in the lawsuit styled *Russell G. Binder, Plaintiff v. The Charleston Town General Hospital d/b/a Jefferson Medical Center, City Hospital, Inc. d/b/a Berkley Medical Center; West Virginia University Hospitals, Inc., West Virginia United Health System, Inc., and West Virginia University Hospitals – East, Inc., Defendants*, Civil Action No. 15-C-530 pending in the Circuit Court of Berkeley County, West Virginia (the "Binder Action"); Thomas J. Hurney, Jr., of Jackson Kelly, PLLC, representing Camden Clark Memorial Hospital Corporation; Javier F. Flores and Sean D. Thomas of Dinsmore & Shohl, LLP, representing Ciox Health, LLC ("CIOX"), Camden Clark Memorial Hospital Corporation, The Charles Town General Hospital d/b/a Jefferson Medical Center ("Jefferson Medical Center"), and City

Hospital, Inc. d/b/a Berkeley Medical Center (“Berkeley Medical Center”)(collectively, the “Hospital Defendants”); and Devon Stewart of Steptoe & Johnson, PLLC, representing CIOX, Jefferson Medical Center and Berkeley Medical Center.

After reviewing the various court filings, the Court heard from counsel on each of the pending motions. CIOX asked the Court to allow it to intervene to facilitate the proposed settlement and to give the Court jurisdiction over CIOX. The parties further requested consolidation of the Binder Action with this action to obtain this Court’s approval and oversight of a class settlement entered by the some of the Smith Plaintiffs, all of the Binder Plaintiffs, and CIOX over claims involving requests for patient medical records from WVU medicine entities that were fulfilled by CIOX, which operated as a vendor to the WVU medicine entities (the “WVU Medicine Settlement”). The WVU medicine entities that are covered by the settlement with CIOX include Camden-Clark (for a portion of the requests at issue in this lawsuit), Jefferson Medical Center, Berkeley Medical Center, and several other WVU medicine entities operating under the WVU medicine umbrella (collectively, the “WVU Medicine Entities”).

Counsel explained that both the Binder Action and this action have been stayed since 2017 due to overlap with a proposed statewide class action in a federal lawsuit against CIOX and other medical vendors (the “Wilson Action”). Pursuant to the August 24, 2017 Order Granting Motion to Stay in this action, the proposed statewide settlement in the Wilson Action would have resolved certain claims of the purported class in this action. The Binder and Smith Plaintiffs sought to intervene in the Wilson Action. However, before the Court ruled on the proposed intervention, the Smith Plaintiffs, the Binder Plaintiffs, and CIOX entered into the WVU Medicine Settlement, and all claims involving medical records requests to the WVU Medicine Entities were carved out of the settlement of the Wilson Action.

In light of the WVU Medicine Settlement, the parties to the Binder Action and this action, and CIOX, the proposed intervenor, requested that this Court transfer the Binder Action

to this Court and exercise its discretion to consolidate the Binder Action with this action. In support of the parties' request for transfer and consolidation, the Court has been advised that the WVU Medicine Settlement, if approved, would resolve a large portion of the issues and claims in this action as well as all of the issues of the Binder Action, and the consolidation of the two actions would allow efficient resolution of the common questions of law and fact presented therein.

In support of the parties' request, they presented a proposed procedure, to the extent consolidation is granted. First, CIOX sought leave to intervene as a defendant in the consolidated actions pursuant to Rule 24(b) of the West Virginia Rules of Civil Procedure, allowing the Court to obtain jurisdiction over CIOX. Second, the parties asked this Court to lift the stay allowing the parties to move forward with a joint motion for preliminary approval of the WVU Medicine Settlement, which will resolve medical record requests processed by CIOX at issue in the Smith and Binder Actions. The parties acknowledge that some claims in the Smith Action involving medical records requests not processed by CIOX would be left to be resolved, although the Court was advised that a separate settlement has been reached which will be administered separately since the settlement terms differ, the parties differ, and the claims administrator and administration procedures differ. Finally, should preliminary approval be granted, the parties to the WVU Medicine Settlement will work with this Court to administer the settlement and obtain final approval of the settlement and dismissal of claims involving medical record requests processed by CIOX, including against Camden-Clark, the Binder Defendants, and any WVU medicine entities whose medical records were processed by CIOX during the class-period.

"The purpose of Rule 42 is 'to promote judicial dispatch and economy, and to guarantee substantial justice to the parties.'" *Hutson v. Henry*, 184 W. Va. 692, 693, 403 S.E.2d 435, 436 (1991) (quoting *Pickett v. Taylor*, 178 W. Va. 805, 807, 364 S.E.2d 818, 821 (1987)). West Virginia Rule of Civil Procedure 42, in part, governs the consolidation of actions. Rule 42(a)

provides that

[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

W. Va. R. Civ. P. 42(a). Rule 42(b) provides that

[w]hen two or more actions arising out of the same transaction or occurrence are pending before different courts or before a court and a magistrate, the court in which the first such action was commenced shall order all the actions transferred to it or any other court in which any such action is pending. The court to which the actions are transferred may order a joint hearing or trial of any or all of the matters in issue in any of the actions; it may order all the actions consolidated; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

W. Va. R. Civ. P. 42(b).

Furthermore,

[u]nder the provisions of Rule 42(b) R.C.P., when two actions arise out of the same transaction or occurrence and both actions are pending in two different circuit courts, it is mandatory that the court in which the first action was commenced either transfer the other action to the court where the first action was commenced or transfer its pending action to the court where the other action is still pending. After one of the actions is transferred, then it is discretionary with the court to which one of the actions has been transferred to consolidate the actions for trial, under Rule 42(a) R.C.P., if there is a common question of law and fact in both actions.

Syl., *Halon v. Joy Mfg. Co.*, 187 W. Va. 280, 418 S.E.2d 594 (1992) (quoting Syl, *Bank of Ripley v. Thompson*, 149 W. Va. 183, 139 S.E.2d 267 (1964)).

Once all actions that arise out of the same transaction or occurrence are pending before the same court, the decision of whether to consolidate the actions shall be guided by the following factors:

- (1) whether the risks of prejudice and possible confusion outweigh the consideration of judicial dispatch and economy; (2) what the burden would be on the parties, witnesses, and available judicial resources posed by multiple lawsuits; (3) the length of time required to conclude multiple

lawsuits as compared to the time required to conclude a single lawsuit; and (4) the relative expense to all concerned of the single-trial, multiple-trial alternatives.

State ex rel. Appalachian Power Co. v. MacQueen, 198 W. Va. 1, 479 S.E.2d 300 (1996) (citing Syl. Pt. 2, *State ex rel. Appalachian Power Co. v. Ranson*, 190 W. Va. 429, 438 S.E.2d 609 (1993)).

In the instant motion, the parties request the Court (1) transfer the Binder Action to this Court, and (2) consolidate the Binder Action with the Smith Action, designating the Smith Action the lead case. The Smith and Binder Actions arise out of similar transactions and occurrences—payments by the requestors to CIOX for medical record copying invoices for which the requestors were, allegedly, overcharged systematically while CIOX served as vendor to Camden-Clark, Berkeley Medical Center, Jefferson Medical Center, and the WVU Medicine Entities. The proposed WVU Medicine Settlement would resolve all claims of alleged overcharging by CIOX for medical records copies requested from the WVU Medicine Entities during the putative class period, including claims against the WVU Medicine Entities. Additionally, transfer of the Binder Action to this Court would allow the WVU Medicine Settlement to be addressed by a single reviewing Court, promoting judicial economy and enabling a singular administration process. Furthermore, consolidation of the Binder Action and the Smith Action is necessary because the proposed settlement raises the same factual and legal questions about the propriety of certifying the proposed settlement class under Rule 23(a)(2) pertaining to the same vendor services provided by CIOX to the WVU Medicine Entities.

Consolidation would provide the recognized benefits of efficiency, economy, and consistency by addressing the same class settlement for administration by one court. *See Cavendar v. McCarty*, 198 W. Va. 226, 233, 479 S.E.2d 887, 894 (1996) (Cleckley, J., concurring); *see also Bank of Ripley v. Thompson*, 149 W. Va. 183, 189, 139 S.E.2d 267, 271 (1964). Aside from the parties' mutual consent in their Motion to Consolidate, the Court notes

that both the Smith and Binder Actions have been stayed since 2017, which significantly reduces the risk that either party will be prejudiced by the consolidation.

Pursuant to the representations of counsel for these parties, the Court finds good cause to allow CIOX to intervene in this action as a party, to transfer the Binder Action to the Circuit Court of Wood County, West Virginia, and to lift the stay previously placed on this lawsuit because of the proposed settlement in Federal Court. Accordingly, Ciox Health, LLC's Agreed-to Motion to Intervene is **GRANTED**; the Joint Motion to Consolidate is **GRANTED**; and the Motion to Lift Stay and to Grant the Previously Filed Joint Motion to Consolidate is **GRANTED**. As such, it is hereby **ORDERED** that the Binder Matter currently pending before the Circuit Court of Berkeley County, West Virginia, Civil Action No. 15-C-530, shall be transferred to the Circuit Court of Wood County, West Virginia. It is further **ORDERED** that the Binder Action is hereby consolidated with this action, for the purposes of administering a proposed class action settlement, with all filings received from the Circuit Court of Berkeley County, West Virginia, and all subsequent filings in these consolidated matters to be filed under the lead case of Civil Action No. 14-C-829.

The Clerk is **DIRECTED** to transmit a copy of this Order to the Circuit Court of Berkeley County, West Virginia to initiate transfer of *Russel G. Binder, Plaintiff v. The Charleston Town General Hospital d/b/a Jefferson Medical Center, City Hospital, Inc. d/b/a Berkley Medical Center, West Virginia University Hospitals, Inc., West Virginia United Health System, Inc., and West Virginia University Hospitals – East, Inc., Defendants*, Civil Action No. 15-C-530, to the Circuit Court of Wood County.

/s/ Jason A. Wharton
Circuit Court Judge
4th Judicial Circuit

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