

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

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,

Plaintiffs,

v.

Civil Action No. 13-C-53
Judge Perri Jo DeChristopher

WEST VIRGINIA UNIVERSITY
HOSPITALS, INC. and WEST VIRGINIA
UNITED HEALTH SYSTEM, INC. d/b/a
WVU Healthcare and any related entities of
WVU Healthcare acting in concert with WVU
Healthcare,

Defendants.

**ORDER APPROVING CLAIMS ADMINISTRATOR REVISED REPORT NUMBER
ONE, SETTLEMENT DEADLINES AND DATE FOR FINAL APPROVAL HEARING**

The Court, having granted Defendant's Motion to Modify December 27, 2022 Order and Amending Class Definitions filed on March 15, 2024, notes the following:

Certification of the Class: On December 27, 2022, this Court granted the Parties Joint Motion for Certification of Settlement Class and Preliminary Approval of the Settlement for Class Certification under West Virginia Rule of Civil Procedure 23(b)(3) defined as follows: "(a) Any patient who requested medical records in writing from 01/18/2008 and through June 5, 2014; (b) "patient" will include any person who was an authorized agent or representative of the 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, Bordas & Bordas, and Romano Law Office); (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.”

Preliminary Approval of the Settlement: On December 27, 2022, the Court preliminarily approved the Settlement and found the following: (1) that the proposed settlement class membership is appropriate; (2) that the settlement methodology 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 Christopher Thomack and Joseph Michael Jenkins 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, the time expended and numerous hearings and appeals that this case generated.

Amendment of Class Definition: On April 4, 2024, the Court granted Defendants' March 15, 2024, Motion to Modify December 27, 2022 Order and Amending Class Definitions, and amended the definition of the Rule 23(b)(3) Class Certification as follows: “(a) Any patient who requested medical records in writing from January 18, 2008 and through June 5, 2014; (b) ‘patient’ will include any person who was an authorized agent or representative of the 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, Bordas & Bordas, and Romano Law Office); (c) ‘patient’ shall not include any state or federal governmental agency or any person acting on behalf of such agency; (d) Fees charged for the records have been paid; and (e) Only the individual or entity who actually paid the fee is a member of the class.

Claims Administrator Revised Report: On May 30, 2024, the Claims Administrator filed the Court-Appointed Claims Administrator Revised Report Number One (the “Claims Administrator Revised Report”), suggesting (1) the creation of the Settlement Website, www.WVUMedicalRecordsOvercharge.com; (2) the Claimant Data Collection Procedures, Agent Claim Form, Patient Claim Form, and Other Party Claim Form; and (3) the plan to provide individual notice to Class Members through postcard notice and notice by publication. The Revised Report Number One replaces and supersedes the Report Number One filed with the Court on October 25, 2023.

Also provided was a proposed Settlement Timeline.

After reviewing the Claims Administrator Revised Report Number One, and other matters noted above, the Court hereby **ORDERS** the following:

1. **Claims Administrator Revised Report:** The Court hereby approves the Claims Administrator Revised Report Number One, filed on May 30, 2024, and finds that the Claims Administrator’s suggested claimant data collection procedures, settlement by publication and proposed notice forms and procedures, Claim Forms and Settlement Timeline (Exhibits A, B, C, D, E, and F to the Claims Administrator Revised Report Number One), meet the requirements of Due Process, West Virginia Rule of Civil Procedure 23(b)(3), and all other applicable laws, and is in accordance with the Pleadings and Orders of the Court, as well as the General Duties and Obligations of Claims Administrator provided in the August 7, 2023, Order Appointing Claims Administrator, and Exhibit A, B, C, D, E and F to the Claims Administrator Revised Report Number One are hereby approved by the Court in the same or substantially similar format.

2. **Notice to Class Members:** The Parties agree that the database compiled by Defendants (“Class Member Database”) includes all Class Members. Within thirty (30) days after

the Court enters this Order, the Claims Administrator shall serve notice of conditional certification of class action and preliminary approval of class action settlement (the "Settlement Notice") in the form of a postcard sent via mail to all Class Member listed in the database (attached hereto as Exhibit B). Additionally, the Claims Administrator will publish the Settlement Notice once in the following newspapers: *The Register – Harold*, *Charleston Gazette*, *The Herald – Dispatch*, *The Exponent Telegram*, *The Dominion Post*, *The Journal – Martinsburg*, *The Intelligencer*, and *Wheeling News Register*, as well as the Settlement Website, www.WVUMedicalRecordsOvercharge.com.

To reach closure on the factual bases to compute and pay claims, within sixty (60) days after the Court enters this Order, the Claims Administrator will also send a Requester Notice via mail to Class Members listed in the Class Member Database as "Requesters" (the "Requester Claim Members"), and will include the Requester Claim Form (attached to the Claims Administrator Revised Report Number One as Exhibit C) to be completed by the Requester Class Member and returned to the Claims Administrator within sixty (60) days of the Requester Notice being sent out. If the Requester Class Member does not respond within sixty (60) days of the Notice being sent, the Claims Administrator will consider sending a second notice to the Requester Class Member, or a separate notice (either the "Patient Notice" or "Other Party Notice") to the Class Member listed in the Class Member Database as either the "Patient" (the "Patient Class Member") or "Other Party" (the "Other Party Class Member"). The Patient Notice will include the Patient Claim Form (attached to the Claims Administrator Revised Report Number One as Exhibit D) to be completed by the Patient Class Member and returned to the Claims Administrator within sixty (60) days of the Patient Notice being sent out. Similarly, the Other Party Notice will include the Other Party Claim Form (attached to the Claims Administrator Revised Report Number One

as Exhibit E) to be completed by the Other Party Class member and returned to the Claims Administrator within sixty (60) days of the Other Party Notice being sent out. If a Requester Claim Form is submitted to the Claims Administrator within sixty (60) days of the Requester Notice being sent, and indicates the Requester Class Member, and not the Patient Class Member, is the owner of the Settlement payment, the Claims Administrator will send the Patient Class Member the Patient Notice and Patient Claim Form to be returned only if the Patient is challenging the Requester's claim to the Settlement payment, to the Claims Administrator within sixty (60) days of the Patient Notice. If a Requester Claim Form is timely submitted to the Claims Administrator and indicates the Patient Class Member, and not the Requester Class Member, is the owner of the Settlement payment, the Claims Administrator will send the Patient Class Member the Patient Notice and Patient Claim Form to be returned to the Claims Administrator within sixty (60) days of the Patient Notice. If a Requester Claim Form is timely submitted to the Claims Administrator and indicates there is an "Other Party" who is the owner of the Settlement payment, the Claims Administrator will send the Other Party Class Member the Other Party Notice and Claim Form that the Other Party must complete and submit to the Claims Administrator by May 6, 2025, to participate in the payment process.

Claim Forms must be submitted to the Claims Administrator. In order to save on administrative expenses, the Claims Administrator will post all three Notices and Claim Forms to the settlement website, www.WVUMedicalRecordsOvercharge.com, including the FAQs (to be drafted for Parties approval) referenced on the Claim Forms.

3. **Form of Objections.** The Claims Administrator will include in the postcard notice, the notice by publication, and the settlement website, a statement notifying Class Members of their right to object to the Settlement. Class Members who wish to object must file a written statement

with the Court by Objection Deadline, no later than ninety (90) days after the Court enters this Order. To be valid, an objection must include: (a) a reference to this case, *Christopher Thomack and Joseph Michael Jenkins v. West Virginia University Hospitals, Inc. and West Virginia United Health System, Inc.*, Civil Action No. 13-C-53; (b) the name, address, telephone number, and, if available, the email address of the Class Member objecting, and if represented by counsel, their counsel's name, address, telephone number, email, and bar number; (c) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (d) a statement of whether they intend to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of their membership in the Class; (f) a detailed list of any other objections submitted by the Class Member, or their counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years; and (g) the Class Member's signature, even if the objection is submitted through counsel. If the Class Member or their counsel have not objected to any other class action settlement in any court in the United States in the previous five (5) years, they shall affirmatively state so in the written materials provided in connection with the objection to this Settlement. This information is material to the Court's consideration of the Settlement; failure to include this information and documentation may be grounds for overruling and rejecting the objection. Any Class Member who fails to timely submit a written objection prior to the Objection Deadline shall be deemed to have waived their objections, and those objections will not be considered by the Court.

4. **Appearance and Objection at the Final Approval Hearing.** Any Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. However, if the Class Member wishes to object to the Settlement at the Final Approval Hearing (either personally or through

counsel), the Class Member must submit a written objection with the Court by the Objection Deadline, no later than ninety (90) days after the Court enters this Order. In addition, to appear in person or by counsel at the Final Approval Hearing, the objecting Class Member must include in their objection a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or their counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who fails to submit a proper Notice of Intention to Appear will not be heard during the Final Approval Hearing. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval of the Settlement.

5. **Failure to Object.** Any Class Member who does not object to the Settlement or Class Counsel's application for an award of Attorneys' Fees, Attorneys' Expenses, and/or an Incentive Award in the manner prescribed herein shall be deemed to have waived such objection, and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, this Preliminary Approval Order, the Final Approval Order, and the Final Judgment to be entered approving the Settlement and/or the application by Class Counsel for an award of Attorneys' Fees, Attorneys' Expenses, and/or an Incentive Award.

6. **Opting Out.** The Claims Administrator will include in the postcard notice, the notice by publication, and the settlement website, a statement notifying Class Members of their right to be excluded from the Settlement Class by "opting-out" of the Settlement Class by completing the "Opt-Out Form", which will be provided on the settlement website, www.WVUMedicalRecordsOvercharge.com. The Opt-Out Form must be submitted to the Claims Administrator by the Opt-Out Deadline, no later than ninety (90) days after the Court enters this Order.

7. **Settlement Procedures and Timeline.** The following settlement procedures and timeline will be followed:

a. **Settlement Notice Date.** By July 10, 2024 (within thirty (30) days after the Court enters this Order), the Claims Administrator shall serve the Settlement Notice in the form of a postcard sent via mail to all Class Member listed in the database. Additionally, the Claims Administrator shall publish the Settlement Notice in in the following newspapers: *The Register – Harold, Charleston Gazette, The Herald – Dispatch, The Exponent Telegram, The Dominion Post, The Journal – Martinsburg, The Intelligencer, and Wheeling News Register*, as well as the Settlement Website (www.WVUMedicalRecordsOvercharge.com) pursuant to the notice plan outlined in Section 2.

b. **Requester Notice Date.** By August 9, 2024 (within sixty (60) days after the Court enters this Order), the Claims Administrator shall send notice to Requester Class Members pursuant to the notice plan outlined in Section 2 (the “First Requester Notice”). If the Requester does not respond within sixty (60) days of the notice, the Claims Administrator will send additional notice(s) outlined in the above notice plan (the “Second Requester Notice”).

c. **Patient Notice Date.** If the Requester does not respond within sixty (60) days of the notice, the Claims Administrator will send notice to Patient Class Members pursuant to the notice plan outlined in Section 2. Once the Requester responds and indicates on the Requester Claim Form that the Agent/Requester or the Patient is the owner of the Settlement payment, the Claims Administrator will

send notice to Patient Class Members pursuant to the notice plan outlined in Section 2.

d. **Other Party Notice Date.** If the Claims Administrator receives a Requester Claim Form indicating an Other Party is the owner of the Settlement payment, the Claims Administrator will send notice to the Other Party Class Member pursuant to the notice plan outlined in Section 2.

e. **Claims Deadline.** All Claim Forms, including the Requester Claim Form, Patient Claim Form, and/or Other Party Claim Form, must be completed and submitted to the Claims Administrator by May 6, 2025 (no later than 9 months after the initial Requester Notice is sent).

f. **Objection Deadline.** All objections to the Settlement shall be filed by September 8, 2024 (no later than ninety (90) days after the Court enters this Order).

g. **Opt-Out Deadline.** All requests to be excluded from the Settlement shall be completed using the Opt-Out Form and submitted to the Claims Administrator by September 8, 2024 (no later than ninety (90) days after the Court enters this Order).

h. **Deadline to File Motion for Final Approval.** No later than thirty (30) days prior to the Final Approval Hearing, Plaintiff shall move for entry of an order of final approval, granting final approval of this Settlement and holding this Settlement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided herein, and ordering that the settlement relief be provided.

i. **Final Fairness Hearing.** The Court shall hold the Final Fairness Hearing for final approval of the settlement on **December 11, 2024 at 3:00 PM** (no earlier than at least sixty (60) days after the Opt-Out and Objection Deadline), to address: (i) whether the Settlement should be finally approved as fair, reasonable, and adequate, and whether the Final Approval should be entered; and (ii) whether to grant Class Counsel's application for Attorneys' Fees and/or the Class Representatives incentive award.

j. The Court may, for good cause, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class Members, though such extensions shall be posted to the Settlement Website. The Final Approval Hearing may be continued by order of the Court from time to time and without further notice to the Class Members beyond updates to the Court's docket and the Settlement Website.

8. **If the Settlement Is Not Finally Approved.** In the event the Final Approval Order or Final Judgment is not entered by the Court, or in the event that the Settlement becomes null and void or terminates pursuant to its terms, the Settlement, this Order, and all orders entered in connection herewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Litigation or in any other case or controversy. In such event the Settlement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement.

9. Provided that the Claims Administrator acts in compliance with this Order, he is hereby granted Judicial Immunity in carrying out the Order.

IT IS SO ORDERED THIS 10TH DAY OF JUNE, 2024.

Also, the Clerk of this Court is **ORDERED** to send a certified copy of this Order to the below identified counsel of record and the Claims Administrator.

David J. Romano, Esq.
Romano Law Office, LC
363 Washington Avenue
Clarksburg, WV 26301

Marc E. Williams, Esq.
Robert L. Massie, Esq.
Nelson Mullins Riley & Scarborough LLP
949 Third Ave., Suite 200
Huntington, WV 25701

David E. Goddard, Esq.
Goddard Law PLLC
7-C Chenoweth Drive
Bridgeport, WV 26330

Christine S. Vaglianti, Esq.
West Virginia University Hospitals, Inc.
1238 Suncrest Towne Centre
Morgantown, WV 26505

Richard A. Monahan, Esq.
Bordas & Bordas PLLC
1358 National Road
Wheeling, WV 26003

Edgar C. Gentle, III, Claims Administrator
Gentle Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, AL 35244

ENTERED this 10th day of June, 2024.

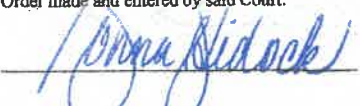


Judge Perri Jo DeChristopher

ENTERED: 6/10/24
DOCKET LINE: 53 Donna Hidock, Clerk

STATE OF WEST VIRGINIA, SS:

I, Donna Hidock, Clerk of the Circuit/Family Court of Monongalia County State aforesaid, do hereby certify the attached ORDER is a true copy of the original Order made and entered by said Court.



CLERK