

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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DAVID S. GIBSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

**A.H. and ADRIANA FLEMING,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

v.

**TO BE FILED IN 16-C-497
Honorable Jennifer F. Bailey
A.H. et al. v. Matulis, et al. 18-C-176**

CHARLESTON AREA MEDICAL CENTER, INC.;

Defendant.

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT, CERTIFYING A SETTLEMENT CLASS
AND SCHEDULING FINAL FAIRNESS HEARING**

This matter is before the Court upon the joint motion of the Plaintiffs, A.H. and Adriana Fleming, individually and on behalf of all others similarly situated (“Plaintiffs”) and Defendant Charleston Area Medical Center, Inc. (“CAMC”) for Preliminary Approval of Class Action Settlement of the above-styled action. The Court held a hearing in this matter on March 3, 2022. Upon review of the record, the moving Parties’ proposed settlement terms, and the applicable statutes and rules, the Court ORDERS and ADJUDGES that the moving Parties’ request for preliminary approval is GRANTED as follows:

I. Background

This putative class action arises out of contested allegations that Defendant CAMC engaged in certain actionable conduct toward female patients of Steven R. Matulis, M.D. — at the Charleston Area Medical Center from January 1, 2010 through February 17, 2016 — upon whom Dr. Matulis performed colonoscopies and/or sigmoidoscopies. The proposed settlement for which the Parties seek preliminary approval from this Court was reached only after the Parties conducted extensive investigation, researched the claims, and negotiated aggressively regarding the matters at issue in the

class complaint. Now, the Parties jointly propose preliminary approval of a class action settlement.

II. Preliminary Matters

1. The Parties to the Class Action Settlement Agreement have negotiated and agreed to the confidential terms and conditions of the settlement set forth herein.

2. The Parties agree that this Court has jurisdiction over the subject matter of these proceedings and over all Parties and the members of the proposed Settlement Class, defined below.

3. The Parties move this Honorable Court for preliminary approval of the proposed settlement, with total relief valued at Five Million and 00/100 Dollars (\$5,000,000.00) and, in so moving, advise the Court that (a) the proposed settlement resulted from extensive arm's-length negotiations and was concluded only after proposed Settlement Class Counsel had duly investigated the issues raised by the proposed Settlement Class Members' claims; (b) the proposed settlement of this action makes available valuable consideration commensurate with the alleged harm to the proposed Settlement Class Members; and (c) the proposed settlement evidenced by the Parties' Settlement Agreement is sufficiently fair, reasonable, and adequate to warrant providing notice of the proposed settlement to the proposed Settlement Class Members and holding a full and final hearing on the proposed settlement.

4. The Parties further move the Court for preliminary approval of (A) the Parties' Settlement Agreement and (B) the Notice of Proposed Class Action Settlement and Fairness Hearing, attached as **Exhibit A** hereto.

III. Summary of Settlement Terms

In moving for preliminary approval of this Settlement, the Parties jointly propose the following settlement terms:

5. CAMC, by its insurer, will pay Five Million and 00/100 Dollars (\$5,000,000.00) ("the Gross Settlement Amount"), said amount to be inclusive of attorneys' fees and expenses, the

proposed Settlement Class Representatives' service awards, and a General Settlement Fund. CAMC has agreed to pay up to \$100,000.00 in expenses related to claims administration.¹

6. Proposed Settlement Class Counsel will seek attorney's fees for the prosecution of this matter and will seek recovery of advanced costs and expenses in amounts to be provided to the Court prior to any Final Fairness Hearing and pursuant to the timetable set by Court.

7. The Parties' Settlement Agreement will result in Plaintiffs' full and final release of any and all remaining claims against CAMC in this matter and a dismissal of this civil action against CAMC, with prejudice and the Plaintiffs agree to execute a full release of all claims against CAMC and its insurers upon entry of a Final Order Approving the Settlement.

8. The Parties propose that the Settlement Class Representatives each be paid from the Gross Settlement Amount for their service as Plaintiffs/Settlement Class Representatives. This amount is in addition to any damages that each shall be entitled to receive as a Settlement Class Member. The Parties further propose that the Settlement Class Representative payments shall be made within the time frame for settlement payments established in Section VII. The amount of the proposed service award for each Settlement Class Representative will be provided to the Court prior to any Final Fairness Hearing.

9. In furtherance of this settlement, the Parties propose that the Claims Administrator appointed by the Court, shall conduct the claims administration process with the assistance of the Guardian *Ad Litem*, named below, and issue notice of this proposed Class Action Settlement, by first-class U.S. mail, to all individuals comprising the Settlement Class as defined herein. The Court will direct payment to the Claims Administrator and to the Guardian *Ad Litem*, taking into account the parties' agreement in this regard.

¹ The Parties have requested that *cy pres* funds from the existing class settlement with CAMC be used to pay costs related to claims administration in the instant settlement before the Court. The Court finds that such a use of *cy pres* funds is improper pursuant to Rule 23(f) of the West Virginia Rules of Civil Procedure.

10. The Parties propose that the Settlement Payment to each Settlement Class Member shall consist of the Gross Settlement Amount Payable to the Settlement Class, less payments made to Settlement Class Counsel (inclusive of all attorney's fees and expenses) and any service awards paid to the Settlement Class Representatives, divided by the total number of Settlement Class Members who are eligible to receive such monies pursuant to the terms and conditions set forth in the Court's Notice Plan. The Parties advise the Court that the putative Settlement Class consists of Two Thousand Five Hundred Twenty-Five (2,525) members.²

11. The Parties propose that any and all sums comprising the Gross Settlement Amount Payable to the proposed Settlement Class which are not paid to eligible members of the proposed Settlement Class shall be, subject to Court approval, awarded *cy pres*, consistent with Rule 23(f) of the West Virginia Rules of Civil Procedure, with fifty percent (50%) to benefit West Virginia Legal Aid and fifty percent (50%) to benefit an appropriate non-profit organization approved by the Court.

IV. The Proposed Settlement Satisfies the Requirements for Preliminary Approval

12. In this case, the Parties reached a proposed settlement only after conducting significant and thorough investigation, legal research, and intense negotiations, including multiple mediations conducted by Charles S. Piccirillo, Esq.

13. The investigation, research, and advocacy conducted in this litigation satisfy the requirements outlined in Rule 23 of the West Virginia Rules of Civil Procedure, on the basis that the proposed settlement is the result of significant investigation, that Settlement Class Counsel appropriately represented the Settlement Class, and, also, that the proposed settlement is the result of arm's-length negotiations.

² Each member of the class will only receive an equal proportionate settlement payment. The class members will not receive multiple payments if they happened to have received multiple colonoscopies and/or sigmoidoscopies from Dr. Matulis at CAMC during the class period.

14. The settlement reached by the moving Parties is the product of arm's-length negotiations and is not a coupon settlement or one of nominal relief. The Parties assert that, to the contrary, this proposed settlement directly addresses and remediates the harm that Plaintiff alleges was caused. The Court finds that terms of the proposed settlement set forth herein satisfy all requirements for preliminary approval by the Court.

V. Provisional Certification of Settlement Class Prior to a Final Fairness Hearing

15. For purposes of preliminary approval of the settlement, the Court hereby certifies a Settlement Class pursuant to Rule 23(a) and Rule 23(b) of the West Virginia Rules of Civil Procedure (the "Settlement Class"). The Settlement Class shall be defined as follows:

All female patients of Steven R. Matulis, M.D., at Charleston Area Medical Center from January 1, 2010, through February 17, 2016, upon whom Dr. Matulis performed colonoscopies and/or sigmoidoscopies.³

16. Excluded from the Settlement Class are (i) members of the judiciary of West Virginia who were directly involved in the adjudication of this matter, and (ii) Settlement Class Counsel; (iii) the Claims Administrator/guardian ad litem or any other person appointed by the Court to oversee any aspect of the administration of the proposed settlement; (iv) female patients who were deceased prior to the date (March 31, 2017) that the original class action lawsuit was filed by Plaintiff Adriana Fleming in the Circuit Court of Kanawha County; (v) patients who have already settled their claims with CAMC outside of this civil action, and (vi) any female patients who properly exclude themselves from the Settlement Class (i.e., opt-outs).

17. The Parties stipulate, only for purposes of the proposed settlement, that the proposed Settlement Class meets the requirements of Rule 23 of the West Virginia Rules of Civil Procedure.

³ This same Settlement Class was previously certified by this Court in this matter on or about June 7, 2021, as to certain settled claims against the Defendant Charleston Area Medical Center, Inc. ("CAMC").

The Court has no objection to the stipulation for the purpose of preliminary approval of the settlement.

18. The Court appoints and approves A.H. and Adriana Fleming as the Settlement Class Representatives; they are both members of the Settlement Class.

19. The Court appoints and approves L. Dante diTrapano and David H. Carriger of Calwell Luce diTrapano, PLLC, P. Rodney Jackson of the Law Offices of P. Rodney Jackson, Ben Salango and Kristina Salango of Salango Law, PLLC, Marvin W. Masters of The Masters Law Firm LC, Robert V. Berthold, Jr., of the Berthold Law Firm PLLC, and Matthew Stonestreet of The Giatras Law Firm, PLLC, as counsel to the certified Settlement Class. Throughout this case, appointed Settlement Class Counsel represented the alleged impacted individuals with vigor and specialized litigation knowledge and applied their collective legal experience to achieve a positive result for the Settlement Class. Thus, Settlement Class Counsel have satisfied the first part of the adequacy requirement found in Rule 23(a).

20. Under West Virginia Rule of Civil Procedure 23, the requirements of class certification are divided into two subsections, Rules 23(a) and 23(b). For a class to be certified, each of the four requirements of Rule 23(a), as well as one of the three requirements of Rule 23(b), must be satisfied. The Parties stipulate for purposes of the settlement of this Action (and only for such purposes, and without an adjudication of the merits or a determination of whether the Settlement Class should be certified if the settlement is not approved or does not otherwise become final) that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules or law have been met with respect to the proposed Settlement.

VI. Notice to the Settlement Class and Administration of the Settlement

21. The Parties have proposed The Ilym Group Inc. (“Ilym”) to serve as Claims Administrator and Perry Shumate, Esq. to serve as Guardian *Ad Litem* for the Settlement Class. Ilym

shall be responsible for implementing the Notice plan and the claims process as contemplated and set forth in the settlement set forth generally herein and to be set forth in detail in a forthcoming formal Settlement Agreement and the Order of the Court, with the assistance of the Guardian *Ad Litem*. The Court finds that Ilym and Attorney Shumate are qualified to serve as Claims Administrator and Guardian *Ad Litem*, respectively, and approves the proposal.⁴

22. The Parties propose a notice plan that consists of directly mailing, via first class mail, a Court-approved Notice Form to proposed Settlement Class Members. The Notice Form will provide additional information to the Settlement Class, provides a mechanism for Settlement Class Members to opt-out of the settlement, and advises Settlement Class Members of relevant deadlines, including deadlines to object and the date of the Final Fairness Hearing. The Court agrees that this effectuation of notice constitutes the best and most effective notice practicable in this case, satisfies the requirements of due process and complies with the requirements of West Virginia Rules of Civil Procedure Rule 23. The Court finds that the Notice Form and notice procedure are the best practicable and are reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of this litigation. The notice plan also affords any Settlement Class Member the right to opt-out of the settlement or the opportunity to present any objections to the settlement. The notice plan complies in all respects with Rule 23 of the West Virginia Rules of Civil Procedure and meets all the requirements of due process.

23. The Court ORDERS the Claims Administrator to access the requisite “Accessible Contact Information,” that is, contact information for the Settlement Class Members, which was previously provided to the Class Administrator and Guardian *Ad Litem* as part of the previous class

⁴ Ilym was previously appointed by the Court to serve as the Claims Administrator in this matter with respect to the previous class settlement of certain claims against CAMC. Ilym has previously had access to the names and addresses of the members of the Settlement Class and is already familiar with the claims administration process for these same settlement class members. Likewise, Attorney Shumate previously assisted Ilym during that process as the Court-appointed Guardian *Ad Litem*.

settlement of certain claims against CAMC in this matter. In so ordering, this Court has recognized and weighed the potential claims any Settlement Class Members may have in this settlement against their privacy rights, recognizing that identifying the patients and notifying them of this process provides them with a mechanism for addressing any alleged wrongdoing relative to their care. Additionally, the Court hereby orders that the Claims Administrator and Guardian *Ad Litem* shall continue to maintain the confidentiality of Settlement Class Members' protected health and identifying information and that such action will adequately protect the privacy interests of Settlement Class Members. The Court recognizes that Defendants maintain their right to a full and fair defense against all allegations and that they, by law, are basing their statutorily mandated "satisfactory assurances" on the rulings and process set out by this Court. The Court hereby finds that no party to this action shall face liability for any claims against it arising out of or related to the provision of the Settlement Class Members' Accessible Contact Information as directed by the Court herein.

24. The Claims Administrator, with the assistance of the Guardian *Ad Litem*, shall commence implementation of the notice contemplated by this Order as follows:

(a) The Claims Administrator shall mail the Notice Form to all Settlement Class Members no later than **seven (7)** business days following entry of this Order.

(b) Prior to mailing these items, the Claims Administrator will find the best-known addresses for each Settlement Class Member, run the data through the Social Security Death Index or other like index or database to identify deceased Settlement Class Members, check all addresses against the National Change of Address database which is maintained by the United States Postal Service and use any other resources available and necessary to obtain the best-known addresses for each Settlement Class Member.

(c) The Court adopts the Notice Plan proposed by the moving Parties (except as modified

by the Court) and the Notice Form attached to this Order as **Exhibit A** and finds that it is clear, concise and written in plain, easily understood language. It provides substantial information, including specific instructions that Settlement Class members need to follow to exercise their rights, and background on issues in the case. It is designed to encourage understanding in a reader-friendly format.

(d) The Claims Administrator, with the assistance of the Guardian Ad Litem, will provide direct notice of the proposed settlement to all Settlement Class members through First Class United States Mail. Direct notice will consist of mailing a Notice Package consisting of the Notice Form (i.e., **Exhibit A**) to all Settlement Class Members and the personal representative, Executrix or Administratrix of any deceased Settlement Class Members (if known). The outside of the envelope that is mailed to Settlement Class Members shall include a call-out that reads **“Important Notice About Class Action Settlement from the Circuit Court of Kanawha County, West Virginia”** or other similar language to allow recipients to distinguish it from junk mail.

(e) Requests for Exclusions or Opt-Outs from the Settlement Class shall be made returnable to the Claims Administrator. The Claims Administrator shall forward a summary of Opt-Outs to Class Counsel and counsel for Defendants. The Claims Administrator shall maintain an adequately staffed telephone number for purposes of fielding and responding to questions from members of the Settlement Class and shall also field and respond to any written inquiries from members of the Settlement Class. When responding to questions from members of the Settlement Class, the Claims Administrator may utilize the assistance of the Guardian *Ad Litem* if such assistance becomes necessary.

(f) The costs of administering the settlement, including all compensation to the Claims Administrator and Guardian *Ad Litem*, shall be separate and apart from the payment of the Gross Settlement Amount.

(g) The deadlines for any Request for Exclusion or any Objection are set forth below. All deadlines for filing or serving papers by Settlement Class Members, putative or otherwise, **require a postmark on or before the stated deadline.**

VII. Final Fairness Hearing

25. The Court's Preliminary Approval of the Settlement Agreement shall be subject to further consideration at a hearing to be held before the Court on **May 9, 2022, at 1:00 p.m.** at the Kanawha County Courthouse (the "Fairness Hearing").⁵ The Court will determine at or following the Fairness Hearing whether the proposed settlement set forth generally herein and to be set forth in detail in a formal Settlement Agreement is fair, reasonable, and adequate and should be finally approved by the Court and the amount of expenses that should be reimbursed to Class Counsel, the amount of money to be paid to the Claims Administrator and to the Guardian *Ad Litem*, the amount of any service payments to the Representative Plaintiffs, if any, and the amount payable to each eligible Settlement Class Member, and such other and further relief as to the matters which the Court deems just and proper.

26. The Court shall retain jurisdiction of this matter to consider all further applications arising out of or in connection with the Settlement Agreement.

27. Any Settlement Class Member may appear at the Fairness Hearing, in person or by counsel, and may be heard to the extent allowed by the Court in support of or in opposition to class certification, the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, and any applications for an award of attorney's fees, costs, expenses, and any service award to the Settlement Class Representative.

⁵ This hearing may be conducted by remote means, as dictated by the specific circumstances of the COVID-19 pandemic on the specific hearing date. If so, the Court, with the assistance of the Claims Administrator and the Parties, shall provide any member of the Settlement Class who timely and properly notifies the Court (and the Parties) of her intent to attend the hearing with information regarding remote access to the Court.

28. Unless such requirement is excused by the Court, no person shall be heard in opposition to the settlement, or the application for an award of attorney's fees, costs, and expenses, unless, by the deadline set forth by the Court, such person files with the Clerk of the Court a notice of an intention to appear and provides a written statement that indicates all bases for objection; all documentation in support of the objection; legal authority, if any, supporting the objection; and a list of any witnesses the person may call for live testimony. Copies of such notice, statement, and documentation, together with copies of any other papers or briefs filed with the clerk, must be simultaneously served on the Court and Counsel for the Parties. Any Settlement Class Member who does not object in the foregoing manner shall be deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, the settlement set forth generally herein and to be set forth in more detail in the forthcoming formal Settlement Agreement, and any related issue.

29. It is ordered that the date for the Final Fairness Hearing and the following deadlines⁶ and dates for filing of the notices, opt-outs, appearances by or on behalf of Settlement Class Members, objections to settlement, filing of motion for attorneys' fees, expenses of litigation and incentive awards shall apply to all moving Parties, counsel and Settlement Class Members in these class proceedings:

Class Notice Program Commences: **Upon Entry of the Order.**

Deadline for Initial Notice to be Mailed: **7 business days following Entry of the Order.**

Deadline for Settlement Class Counsel to File Petition for Attorney's Fees/Expenses and Service Awards to Class Representatives: **April 11, 2022.**⁷

Deadline for Opt-Out Requests: **April 18, 2022.**

⁶ Compliance with the deadlines shall be determined by the postmark of the mailing.

⁷ The Claims Administrator shall provide a copy of Settlement Class Counsel's Petition to any Settlement Class Member who requests it and additionally, shall post it on the settlement website as indicated in the Notice Form.

Deadline to File Objections to Settlement/Notice of Intent to Appear at Final Fairness Hearing: **April 25, 2021.**

Deadline for Claims Administrator to report Opt-Outs: **April 29, 2022.**

Final Fairness/Approval Hearing: **May 9, 2022, at 1:00 p.m.**

The Court reserves the right to adjourn and/or reschedule the Fairness Hearing without further notice of any kind; therefore, any Settlement Class Member intending to attend the Fairness Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time, and location of the Fairness Hearing with Settlement Class Counsel.

VIII. Stay of Litigation

30. Pending the final determination of whether the settlement set forth generally herein and to be set forth in detail in a forthcoming Settlement Agreement should become Final, all pre-trial proceedings and briefing schedules in the proceedings before the Court are stayed, except as to the declaratory judgment action between West Virginia Mutual Insurance Company and Steven R. Matulis, M.D. (Case No. 17-C-748) which will proceed according to the scheduling order to be entered in that matter following the March 15, 2022 scheduling conference. Further, this settlement does not compromise or affect the Settlement Class Members' rights, if any, related to any other parties or individuals beyond the precise scope of this settlement and Settlement Agreement. If the settlement and forthcoming Settlement Agreement is not finally approved by the Court, the Settlement Agreement does not become Final or the Settlement Agreement otherwise terminates, the stay referenced here shall be immediately terminated. The moving Parties shall, as soon thereafter as possible, request a new Scheduling Order from the Court.

31. This stay is necessary to protect and effectuate the Settlement Agreement, and the settlement contemplated thereby, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the settlement set forth in the forthcoming Settlement Agreement and

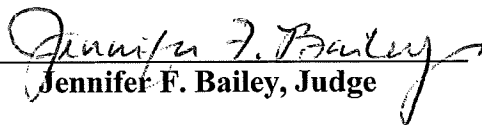
to enter Final Judgment, if and when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

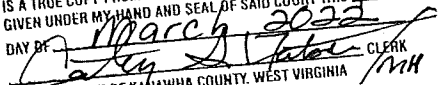
IX. Conclusion

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for preliminary approval of class action settlement is **GRANTED** as molded.

The Clerk is directed to send certified copies of this Order to all counsel of record, to the Claims Administrator, Ilym Group, Inc., P.O. Box, Tustin, CA, and to the Guardian *Ad Litem*, Perry L. Shumate, Esq., P.O. Box 231, Mount Hope, WV 25880.

ENTERED this 10th day of March, 2022.


Jennifer F. Bailey, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 10th
DAY OF March 2022

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA /MK

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Women Who Received a Colonoscopy or Sigmoidoscopy at the CHARLESTON AREA MEDICAL CENTER performed by Dr. Steven R. Matulis Between JANUARY 1, 2010, through FEBRUARY 17, 2016

You are Eligible to Receive Money from a Class Settlement

The Honorable Jennifer F. Bailey, Circuit Judge of Kanawha County, West Virginia, has authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.

- If you had a colonoscopy or sigmoidoscopy procedure performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis during the period **January 1, 2010, through February 17, 2016**, you are a member of a proposed Settlement Class, and you are eligible for cash payments. **If you received this Notice in the mail from the Claims Administrator, then sealed Court records indicate that you are a member of the Settlement Class.**
- Information provided to the Court, under seal, indicates that you had a colonoscopy or sigmoidoscopy procedure during the above time period performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis. The Court has appointed a Claims Administrator to contact you above this proposed Class Settlement. Neither the Court nor the Claims Administrator have ever reviewed or maintained copies of your medical records.

Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT	You are a member of the Settlement Class. If you do nothing in response to this letter, you will be included in the settlement and will receive a payment as part of the settlement once the settlement is approved by the Court. You are not required to complete a form, contact the Claims Administrator or take any other action.
ASK TO BE EXCLUDED	The only way you can individually sue CAMC is to ask to be excluded from the Settlement. If you ask to be excluded, you will receive no payment through this process.
OBJECT TO SOME PART OF THE SETTLEMENT	You may write to the Court about why you disagree with the Settlement.
GO TO A HEARING	You may speak in Court on May 9, 2022, at 1:00 p.m. about the fairness of the Settlement. You can only do this if you do not ask to be excluded from the settlement.
IF THE PATIENT HAS DIED	You should give this Notice to the Administrator or Executor of the Estate of the Patient and have them contact the Claims Administrator immediately. If you do not have an Executor or Administrator, please contact the Claims Administrator at (844) 744-8424 for further instructions.

- These rights and options – *and the deadlines to exercise them* – are explained in this Notice.
- The Court in charge of this case still must decide whether to approve the Settlement. Cash payments will only be made if the Court approves the Settlement. This process will take some time, so please be patient.

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QUESTIONS? CALL (844) 744-8424 OR GO TO WWW.WVHOSPITAL-SETTLEMENT.COM

1. Why did I receive this notice?

BASIC INFORMATION

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of certain Claims made against CAMC in this lawsuit and your options before the Court decides to give “final approval” to this Settlement. This Notice explains the Settlement, and it explains your legal rights.

The Honorable Jennifer F. Bailey, Judge of the Circuit Court of Kanawha County, West Virginia, is overseeing this case. This case is known as *A.H. and Adriana Fleming, et al., v. Matulis, et al.*, Kanawha County Civil Action No. 18-C-176.

The persons who sued are called the “Plaintiffs.” The “Defendant” is the Charleston Area Medical Center, Inc., a hospital where Dr. Steven Matulis performed colonoscopies and sigmoidoscopies.

Because your right to pursue claims against CAMC will be affected by the Settlement, you should carefully read this Notice.

2. What is this lawsuit about?

(a) The Plaintiffs claim that the Defendant violated certain laws pertaining to discrimination and sexual harassment regarding female patients who had colonoscopy and sigmoidoscopy procedures performed by Dr. Steven R. Matulis, M.D, at the CHARLESTON AREA MEDICAL CENTER in Kanawha County, West Virginia between **January 1, 2010** and **February 17, 2016**.

(b) The Defendant denies that it has done anything wrong. The Court has not yet ruled on the merits of any of Plaintiffs’ claims.

(c) The settlement that is the subject of this Notice (see Question 6 below) will pertain to all claims made by the Plaintiffs against CAMC that still remain in the underlying lawsuit.

3. What is a class action, and why is this case a class action?

In a class action, one or more persons (called “Class Representatives”) sue on behalf of others with similar claims. In this case, there are two Class Representatives. All people with similar claims are called “Class Members.” When a class action is settled, it resolves the Class Representatives’ and the Class Members’ claims, except the claims of those who exclude themselves. The Court has preliminarily ordered that this case may proceed as a class action, but only for the limited purpose of settlement of the claims of all Class Members against the Defendant.

4. Why is there a Settlement?

The Class Representatives and their attorneys believe that the proposed Settlement with CAMC is, under all the circumstances, fair and in the best interest of all Class Members. By settling the remaining claims against CAMC, the parties avoid some uncertainties, costs, and risks associated with trial. The Court can now

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QUESTIONS? CALL (844) 744-8424 OR GO TO WWW.WVHOSPITAL-SETTLEMENT.COM

distribute money obtained from the Settlement to Class Members.

5. Who is included in the Settlement?

You are a member of a proposed Settlement Class and are eligible for cash payments if:

- You are a former female patient of Dr. Steven R. Matulis, and
- You had a colonoscopy or sigmoidoscopy procedure performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis, and
- The colonoscopy or sigmoidoscopy was performed between **January 1, 2010, and February 17, 2016.**

Information provided to the Court, under seal, indicates that the person to whom this Notice is directed is a member of the Settlement Class.

6. What are the terms of the Settlement?

CAMC has agreed to pay a total of **\$5,000,000.00** (“the Gross Settlement Amount”) to settle the remaining claims of all members of the Settlement Class. This will be a final settlement and no other monies will be paid to the Class on behalf of CAMC. After deductions for attorneys’ fees and expenses and any service awards made to the Class Representatives (see Question 18 below), the remaining Net Settlement Fund will be available for equal distribution to members of the Settlement Class.

Further, the Court has determined that the costs of administering the settlement, including the costs of the Claims Administrator and Guardian *Ad Litem* will be paid by CAMC.

7. How much will my payment be?

The exact settlement payment you will receive cannot be determined at this time. The exact cash payment depends on:

- The number of Class Members who request to be excluded from the settlement;
- The number of Class Members who fail to cash checks mailed to them as part of the settlement process; and
- The amount of attorney fees, expenses, and any service awards to Class Representatives which may be approved by the Court.

The Net Settlement Fund will be distributed to Class Members upon Court approval of the settlement. There are **2,525** Class Members. The Court has structured this settlement so that Class Members receive an equal share of the Net Settlement Fund. To simplify the process, the Court has ordered that you do not need to complete a claim form or other paperwork to receive your share of the Net Settlement Fund.

Cash payments will be distributed after the Court holds a Final Fairness Hearing (see Question 14 below), grants final approval of the Settlement, and resolves any appeals.

8. What about my personal health information and medical records?

The Court has approved and appointed a Claims Administrator and Guardian *Ad Litem* to protect the confidentiality of your protected information and oversee the administration of the claims. The Court has appointed a Claims Administrator to contact you about this proposed Class Settlement, using contact information previously provided to the Court, under seal, by the CHARLESTON AREA MEDICAL CENTER pursuant to a Court Order. Neither the Court, the Guardian *Ad Litem*, nor the Claims Administrator have ever reviewed or maintained copies of your medical records. The Guardian *Ad Litem* and Claims Administrator will not provide any information about you to any person or entity other than the Court.

9. What happens if I remain in the Settlement Class?

REMAINING IN THE SETTLEMENT CLASS

If the Settlement becomes final, you will give up your right to sue CAMC on your own for the claims being resolved by this Settlement unless you exclude yourself from the Settlement Class. You also will be bound by any decisions of the Court.

In return for paying the Settlement amount, CAMC will be released from all claims being resolved by this Settlement. If you have any questions concerning the settlement, you can talk to the Claims Administrator or law firms listed in Question 11 of this Notice for free, or you can, of course, talk to your own lawyer about what this means.

10. What if I do not want to be part of the Settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want benefits from this settlement, but you want to keep the right to sue CAMC on your own over the remaining claims in this case, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting out” of the Settlement.

To exclude yourself from the Settlement and receive no Settlement payment, you must send a signed Request for Exclusion by mail stating: (a) your name, address, and telephone number and (b) a statement that you wish to be excluded from the Settlement Class. Requests for Exclusion must be mailed to the following:

Claims Administrator
A.H./Fleming v. Matulis Class Settlement
c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

Your request for exclusion must be postmarked no later than April 18, 2022. If you wish to individually sue CAMC, you should immediately consult an attorney since statutes of limitation could bar a claim if not filed promptly.

11. How do I tell the Court that I do not like the Settlement?

OBJECTING TO THE SETTLEMENT

You can submit a written objection to the Settlement if you do not like some or all of it. The Court will consider your views. Your objection must include the following:

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QUESTIONS? CALL (844) 744-8424 OR GO TO WWW.WVHOSPITAL-SETTLEMENT.COM

- The name of the case, *A.H. and Adriana Fleming, et al., v. Matulis, et al.*, Kanawha County Civil Action No. 18-C-176;
- Your full name, address, telephone number, signature, and
- The specific reasons you are objecting, and any legal support or evidence you wish to use to support your objection.

You cannot both request exclusion from the Settlement Class by opting out *and* objecting to the Settlement. Only members of the Settlement Class may object to the Settlement.

Any comment or objection must be **in writing**, mailed to **ALL** the addresses on the following chart:

Court	Counsel for Settlement Class	Counsel for CAMC
Honorable Jennifer F. Bailey 111 Court Street, 4 th Floor Charleston, West Virginia 25301	L. Dante diTrapano, Esq. David H. Carriger, Esq. Calwell Luce diTrapano PLLC Law and Arts Center West 500 Randolph Street Charleston, WV 25302	Lee Murray Hall, Esq Jenkins Fenstermaker, PLLC P.O. Box 2688 Huntington, WV 25726- 2688
	P. Rodney Jackson, Esq. P. Rodney Jackson & Associates 401 Fifth Third Center 700 Virginia Street, Suite 400 Charleston, West Virginia 25301	Heather Heiskell Jones, Esq. Spillman, Thomas & Battle, PLLC 300 Kanawha Blvd, East Charleston, WV 25301
	Ben Salango, Esq. Kristy Salango, Esq. Salango Law, PLLC 206 Capitol Street Charleston, WV 25301	Arie M. Spitz, Esq. Dinsmore & Shohl LLP P.O. Box 11887 Charleston, WV 25339- 1887
	Martin W. Masters, Esq. The Masters Law Firm LC 181 Summers Street Charleston, WV 25301	
	Robert V. Berthold, Jr., Esq. Berthold Law Firm PLLC 208 Capitol Street P.O. Box 3508 Charleston, WV 25301	
	Matthew Stonestreet, Esq. The Giatras Law Firm, PLLC 118 Capitol Street, #400 Charleston, WV 25301	

Your objection must be postmarked no later than April 25, 2022.

12. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement because the case no longer affects you, and you will not get any benefits from the Settlement.

13. What if I do nothing?

DO NOTHING

Unless you exclude yourself from the Settlement Class, you will be bound by all Settlement terms and will receive a settlement payment, upon Court approval of the Settlement.

14. When and where will the Court decide whether to approve the Settlement?

THE FINAL FAIRNESS HEARING

The Court will hold a Final Fairness Hearing at **1:00 p.m. on May 9, 2022**, at the Kanawha County Courthouse, 111 Court Street, 4th Floor, Charleston, West Virginia 25301. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections or comments, the Court will consider them at that time and may listen to people who have asked to speak at the hearing. The Court will also decide how much to pay Class Counsel and the amount of any service award for the Class Representative. At or after the hearing, the Court will decide whether to approve the Settlement.

The hearing may be moved to a different date or time. If the hearing is moved, you will receive an additional notice from the Claims Administrator.

15. Do I need to attend the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to attend at your expense. If you send an objection or comment, you do not have to come to Court to talk about it. As long as you mailed your complete and valid written objection on time, as described above in Question 11, the Court will consider it. You may also hire your own lawyer at your own expense to attend on your behalf, but you are not required to do so.

16. May I speak at the hearing?

If you do not exclude yourself from the Settlement and object to some part of it, you have a right to appear and speak at the Final Fairness Hearing and present your objections. You may also appear by counsel if you wish. To be permitted to appear, however, you, or your legal counsel, must do the following on or before the hearing:

- File with the Court a notice of intention to appear, together with a statement detailing your objections (see Question 12) no later than **April 25, 2022**; and
- Serve copies of such notice and all supporting materials, either by hand delivery or by first-class mail, postage prepaid, to all ten of the addresses listed in Question 11.
-

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court has appointed the attorneys listed in Question 11 as Settlement Class Counsel to represent Class Members.

However, if you exclude yourself from the Settlement Class, you will not be represented by Settlement Class Counsel and must hire a lawyer at your own expense. If you remain a member of the Settlement Class, you are represented by Settlement Class Counsel.

18. How will the lawyers be paid?

Settlement Class Counsel will file a petition with the Court seeking an award of attorneys' fees to be paid from the gross settlement payment by CAMC. Settlement Class Counsel will also ask the Court to approve reimbursement of the expenses they have advanced in bringing this case. Settlement Class Counsel will file a petition to fees and expenses with the Court on or before **April 11, 2022**. This petition will identify the amount of the fees and expenses sought by Settlement Class Counsel. It will be made available for your review by the Claims Administrator upon request and posted on the website **www.wvhospital-settlement.com**. Settlement Class Counsel will also request that the Class Representatives receive a service award for their service in this litigation in an amount that is to be determined and will be included in the petition for fees and expenses that Settlement Class Counsel will file on or before **April 11, 2022**.

GETTING MORE INFORMATION

19. How do I get more information?

This Notice summarizes the Settlement. If you have any questions or wish to have any additional information, you may contact the Claims Administrator, who will provide you with answers to your questions or you also may write with questions to Claims Administrator, A.H./Fleming v. Matulis Class Settlement c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA, 92781, visit website **www.wvhospital-settlement** or call the toll-free number **(844) 744-8424**.