

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**Women Who Received a Colonoscopy or Sigmoidoscopy Performed by Dr. Steven R. Matulis at the Charleston Area Medical Center Between January 1, 2010, through February 17, 2016**

*You Could Receive Money from a 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 by Dr. Steven R. Matulis at the Charleston Area Medical Center during the period **January 1, 2010**, through **February 17, 2016**, you are a member of a proposed Settlement Class, and you may be 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 by Dr. Steven R. Matulis at the Charleston Area Medical Center. 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.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>PARTICIPATE IN THE SETTLEMENT</b>	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.
<b>ASK TO BE EXCLUDED</b>	The only way you can individually sue Dr. Steven Matulis and/or Charleston Gastroenterology Associates, P.L.L.C., is to ask to be excluded from the Settlement. If you ask to be excluded, you will receive <b>no payment</b> through this process.
<b>OBJECT TO SOME PART OF THE SETTLEMENT</b>	You may write to the Court about why you disagree with the Settlement.
<b>GO TO A HEARING</b>	You may speak in Court on November 3, 2021, at 3 p.m. about the fairness of the Settlement. You can only do this if you do not ask to be excluded from the settlement.
<b>IF THE PATIENT HAS DIED</b>	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.

**QUESTIONS? CALL (844) 744-8424**

## 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 Claims made against Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C. (his former practice group) 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 “Defendants” are Steven R. Matulis, M.D., a gastroenterologist, and Charleston Gastroenterology Associates, P.L.L.C., which is a professional group of doctors that Dr. Matulis was a member of.

**Because your right to pursue claims against Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., may be affected by the Settlement, you should carefully read this Notice.**

## 2. What is this lawsuit about?

- (a) The Plaintiffs claim that the Defendants violated various duties, laws, and public policies 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 Defendants deny that they have 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 Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C.
- (d) The settlement that is the subject of this Notice **does not** pertain to any claims made by the Plaintiffs against Charleston Area Medical Center (“CAMC”) – some of those claims were previously settled with CAMC while other claims remain pending 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 Defendants.

## 4. Why is there a Settlement?

The Class Representatives and their attorneys believe that the proposed Settlement with Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., is, under all the circumstances, fair and in the best interest of all Class Members. By settling this part of the case against Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., the parties avoid some uncertainties, costs, and risks associated with trial and delay in distributing 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 you may be 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 by Dr. Steven R. Matulis at the Charleston Area Medical Center, 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 falls within the Settlement Class.

## 6. What are the terms of the Settlement?

Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., have agreed to pay a total of **\$2,048,655.00** (“the Gross Settlement Amount”) to settle the 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 the settling parties, Dr. Matulis and Charleston Gastroenterology Associates, P.L.L.C. After deductions for attorneys’ fees and expenses and any service award made to the Class Representatives (see Question 19 below), equal payments from the General Settlement Fund will be available for distribution to members of the Settlement Class.

The insurer for Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., have agreed to pay all costs associated with the administration of the Settlement. This includes the costs of the Claims Administrator and Guardian *Ad Litem*. The Claims Administrator, with the assistance of the Guardian *Ad Litem*, is responsible for administering the notice plan to Settlement Class members, managing the General Settlement Fund, and distributing cash payments to eligible Settlement Class members.

## 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 Settlement Class payments will be distributed to Class Members upon Court approval of the settlement. The Court has structured this settlement so that Class Members receive an equal share of the funds. 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.

Cash payments will be distributed after the Court holds a Final Fairness Hearing (see Question 15 below), grants final approval of the Settlement, and resolves any appeals.

**8. Why is the Settlement with Dr. Matulis and Charleston Gastroenterology Associates, P.L.L.C. less than the previous Settlement with CAMC?**

The Class Representatives and their attorneys believe that the proposed Settlement with Dr. Steven R. Matulis and Charleston Gastroenterology Associates P.L.L.C. is, under all the circumstances, fair and in the best interest of all Class Members.

Dr. Matulis and Charleston Gastroenterology Associates P.L.L.C. had significantly lower limits of insurance than did CAMC. Moreover, there was a risk, going forward, that a court would rule that Dr. Matulis and Charleston Gastroenterology Associates P.L.L.C. had no insurance coverage at all for the claims in this case.

**9. 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.

**10. 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 Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., 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, Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., 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 12 of this Notice for free, or you can, of course, talk to your own lawyer about what this means.

**11. 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 Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., on your own about all the legal issues 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 October 22, 2021.**

**QUESTIONS? CALL (844) 744-8424**

If you wish to individually sue Dr. Steven R. Matulis and Charleston Gastroenterology Associates, P.L.L.C., you should immediately consult an attorney since statutes of limitation could bar a claim if not filed promptly.

**12. 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:

- 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 Dr. Matulis	Counsel for CGA
Honorable Jennifer F. Bailey 111 Court Street, 4 <sup>th</sup> 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	Tamela J. White-Farrell, Esquire Bernard Vallejos, Esquire Farrell, White & Legg PLLC 914 Fifth Avenue Huntington, WV 25701	Perry W. Oxley, Esquire L.R. Sammons III, Esquire Eric D. Salyers, Esquire Oxley Rich Sammons, PLLC 517 9 <sup>th</sup> Street, Suite 1000 Huntington, WV 25701
	P. Rodney Jackson, Esq. P. Rodney Jackson & Associates 401 Fifth Third Center 700 Virginia Street, Suite 400 Charleston, West Virginia 25301		
	Ben Salango, Esq. Kristy Salango, Esq. Salango Law, PLLC 206 Capitol Street Charleston, WV 25301		
	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 October 22, 2021.**

**13. 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.

**14. 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.

**15. 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 **3 p.m. on November 3, 2021**, at the Kanawha County Courthouse, 111 Court Street, 4<sup>th</sup> 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. If the hearing is held by remote access, you will be provided with a link to allow your remote participation.

**16. 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 12, 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.

### 17. 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 **October 22, 2021**; and
- Serve copies of such notice and all supporting materials, either by hand delivery or by first-class mail, postage prepaid, to all eight of the addresses listed in Question 12.

## THE LAWYERS REPRESENTING YOU

### 18. Do I have a lawyer in this case?

Yes. The Court has appointed the attorneys listed in Question 12 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.

### 19. 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 Dr. Steven Matulis and Charleston Gastroenterology Associates, P.L.L.C. 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 **October 8, 2021**. 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 website **www.WV-AHAF-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 October 8, 2021.

## GETTING MORE INFORMATION

### 20. 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.WV-AHAF-Settlement.com**, or call the toll-free number **(844) 744-8424**.