

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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

STEVEN R. MATULIS, M.D.;
CHARLESTON GASTROENTEROLOGY
ASSOCIATES, P.L.L.C.; and
CHARLESTON AREA MEDICAL CENTER, INC.;

Defendants.

**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 Defendants Steven R. Matulis, M.D. (“Dr. Matulis”) and Charleston Gastroenterology Associates, P.L.L.C. (“CGA”) (cumulatively/collectively “the moving Defendants”) for Preliminary Approval of Class Action Settlement of the above-styled action. The Court held a hearing in this matter on August 27, 2021. Upon review of the record, of the moving Parties’¹ proposed settlement terms, and of 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 the moving Defendants engaged in certain tortious conduct toward, and otherwise failed to protect the interests of, those female patients of Steven R. Matulis, M.D.—at Charleston Area Medical Center from January 1,

¹ The term “moving Parties” refers to Plaintiffs and the moving Defendants.

2020, through February 17, 2016—upon whom Dr. Matulis performed colonoscopies and/or sigmoidoscopies. The proposed settlement for which the moving Parties seek preliminary approval from this Court was reached only after the moving Parties conducted extensive investigation, researched the claims, and negotiated aggressively regarding the matters at issue in the class complaint. Now, the moving 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 that are hereby adopted and incorporated into this Order. In the event of any ambiguity or conflict between the terms and conditions of the settlement and this Order, the provisions of this Order shall prevail.

2. The 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 Court preliminarily approves the proposed settlement, with total relief valued at Two Million Forty-Eight Thousand Six Hundred Fifty-Five and 00/100 Dollars (\$2,048,655.00), and finds that (a) the proposed settlement resulted from extensive arm's-length negotiations and was concluded only after Settlement Class Counsel had duly investigated the issues raised by 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 pursuant to the confidential terms and conditions of the settlement generally set forth herein and to be set forth in detail in a forthcoming formal 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 hearing on the proposed settlement.

4. The Court preliminarily approves of (A) the terms of the Settlement set forth herein and (B) the Notice of Proposed Class Action Settlement and Fairness Hearing (“Notice Form”), attached as **Exhibit A** hereto.

III. Summary of Settlement Terms

The Parties jointly propose the following settlement terms:

5. The Defendants, by their insurer and/or in combination with their own funds, will pay Two Million Forty-Eight Thousand Six Hundred Fifty-Five and 00/100 Dollars (\$2,048,655.00) (“the Gross Settlement Amount”), said amount to be inclusive of attorneys’ fees and costs, the putative Class Representatives’ service award, and a General Settlement Fund. The Defendants, by their insurer and/or in combination with their own funds, will pay the costs of the class notice and claims administration.

6. Settlement Class Counsel are seeking attorney’s fees for the prosecution of this matter in an amount no greater than 39% of the Gross Settlement Amount and are seeking recovery of advanced costs and expenses. Settlement Class Counsel will file a separate petition for fees and expenses in accordance with the provisions of this Order and the Notice Form.

7. The moving Parties represent that the forthcoming formal Settlement Agreement will include a mutual release, to be set forth fully therein, and shall also include their agreement to seek a dismissal of the Action with prejudice.

8. Settlement Class Counsel are also seeking payment for the putative Class Representatives, A.H. and Adriana Fleming, for their service as Class Representatives. This amount is in addition to any damages A.H. and Adriana Fleming are entitled to receive as Settlement Class Members, and the payment shall be made within the time frame for settlement payments set forth below. Settlement Class Counsel shall provide a proposed amount for this service award at the same time Settlement Class Counsel files their petition for fees and expenses.

9. The moving Parties propose that the Claims Administrator, named below, shall conduct the claims administration process, with the assistance of the Guardian *Ad Litem*, named below, and issue notice of this Class Action Settlement, by mail, to all individuals comprising the Settlement Class as defined herein. The moving Parties propose that the Claims Administrator and the Guardian *Ad Litem* be paid by the moving Defendants, by their insurer and/or in combination with their own funds.

10. Equal payments from the General Settlement Fund shall be made to each eligible Settlement Class member. The moving Parties have advised the Court that the putative Settlement Class consists of Two Thousand Five Hundred Twenty-Five (2,525) members who are eligible for such payments.

11. Any and all sums comprising the Gross Settlement Amount Payable to the Settlement Class (from the General Settlement Fund) which are not claimed by eligible members of the Settlement Class shall be, subject to Court approval, awarded *cy pres*, consistent with the West Virginia Rules of Civil Procedure.

IV. The Proposed Settlement Satisfies the Requirements for Preliminary Approval

12. In this case, the moving Parties reached a settlement after conducting significant and thorough investigation, legal research, and intense negotiations, with the proposed settlement ultimately reached after months of continuing negotiations, including the involvement of an experienced mediator, Donald B. O'Dell, 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 that the proposed settlement is the result of arm's-length negotiation.

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 moving Parties assert that, to the contrary, this proposed settlement directly addresses and remediates the harm that Plaintiffs allege was caused. The Court finds that terms of the proposed settlement set forth herein satisfy all requirements for preliminary approval by the Court.²

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 is 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, (ii) Settlement Class Counsel, (iii) the Claims Administrator and Guardian *Ad Litem* to be appointed by the Court, and (iv) any female patients who properly exclude themselves from the Settlement Class (i.e., opt-outs).

17. The moving 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

² Nothing related to the Court's approval of this settlement between Plaintiffs and moving Defendants – and this Court's certification of a settlement class for the same – impairs the rights of Defendant Charleston Area Medical Center, Inc. ("CAMC"), to object to or oppose any class certification of any remaining claims against CAMC, which objections/exceptions are noted and preserved. All rights and remedies available to CAMC with respect to entitlement to an offset/setoff in the sum of the settlement between plaintiffs and the moving Defendants, are noted and preserved.

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").

Procedure. 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, both members of the Settlement Class, as the Settlement Class Representatives.

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 moving 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 moving 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 moving Parties propose, and the Court approves of, a notice plan that consists of directly mailing the Notice Form, via first class mail, to proposed Settlement Class Members. The Notice Form provides 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 the Guardian *Ad Litem* as part of the previous

⁴ Ilym was previously appointed by the Court to serve as the Claims Administrator in this matter with respect to 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 settlement class members. Likewise, Attorney Shumate previously assisted Ilym during that process as the Court-appointed Guardian *Ad Litem*.

class 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 five (5) 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 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 a cover letter and 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”** 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 that it receives. 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 the responsibility of the moving Defendants and are 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 **November 3, 2021, at 3:00 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. Additionally, the Court will determine the amount of attorney's fees to be awarded, and the amount of expenses to be reimbursed to Class Counsel, the amount of payment to be made to the Claims Administrator and to the Guardian Ad Litem, the amount of a service payment to the Representative Plaintiffs, if any, 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 Representatives.

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 Moving 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: 5 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: October 8, 2021.⁷

Deadline for Opt-Out Requests: October 22, 2021.

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.

Deadline to File Objections to Settlement/Notice of Intent to Appear at Final Fairness Hearing: **October 22, 2021.**

Deadline for Claims Administrator to report Opt-Outs: **October 29, 2021.**

Final Fairness/Approval Hearing: **November 3, 2021, at 3 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 *relative to the settling claims only* are stayed, except as specifically provided for in this Order. Litigation may and shall continue between and among any and all non-settling parties unless and/or until further order of this Court. 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 herein shall be immediately terminated, and 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

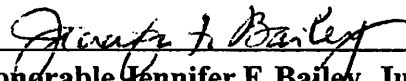
to enter Final Judgment, if and when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

IX. Conclusion

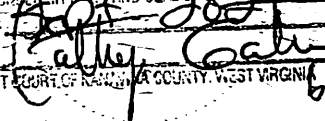
WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for preliminary approval of class action settlement is **GRANTED** as molded.

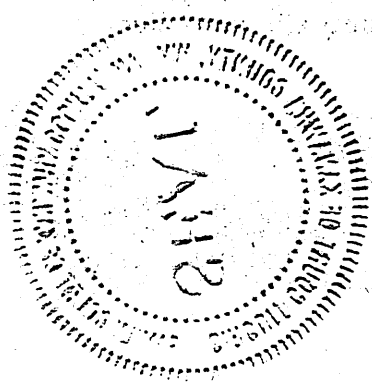
The Clerk is directed to send certified copies of this Order to all counsel of record, to the Claims Administrator, ILYM Group, Inc., P. O. Box 2031, Tustin, CA, and to the Guardian Ad Litem, Perry L. Shumate, Esq., P.O. Box 231, Mount Hope, WV 25880.

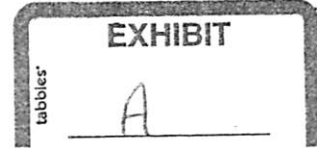
ENTERED this 15th day of September, 2021.



Honorable Jennifer F. Bailey, Judge
Kanawha County Circuit Court

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GIBSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AID 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 15
DAY OF Sept 2021.
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
by S. Gibson





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.

Table with 2 columns: Option and Description. Options include: PARTICIPATE IN THE SETTLEMENT, ASK TO BE EXCLUDED, OBJECT TO SOME PART OF THE SETTLEMENT, GO TO A HEARING, IF THE PATIENT HAS DIED.

- 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.

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 11 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 (F1926201.2)

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.

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 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	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 th 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		

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QUESTIONS? CALL (844) 744-8424

	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, 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. If the hearing is held by remote access, you will be provided with a

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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?

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QUESTIONS? CALL (844) 744-8424

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.