

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

THOMAS M. WILSON, SR.,
et al.,

Plaintiffs,

Civil Action No. 2:16-CV-05279
Judge John T. Copenhaver, Jr.

v.

MRO CORPORATION,
CIOX HEALTH, LLC, and
MEDI-COPY SERVICES, INC,

Defendants.

PRELIMINARY APPROVAL ORDER

This matter came before the Court on the Amended Joint Motion of Plaintiffs, Thomas M. Wilson, Sr., Daniel Halsey as Administrator of the Estate of Tamara Halsey, Jason Grazuties, Sandra Sheppard, Pamela Bradley as Executrix of the Estate of Robert Bradley, Deborah Martin as Executrix of the Estate of Arvada Martin, Lisa New and Robert Stratton, individually and on behalf of all others similarly situated (“Plaintiffs”), and MRO Corporation, CIOX Health, LLC and Medi-Copy Services, Inc., (“Defendants”) (collectively, the “Parties”) for an Order Conditionally Certifying the Settlement Class and Subclasses, Preliminarily Approving the Parties’ Proposed Amended Settlement Agreement and Release, Approving Class Notice, Appointing Class Representatives and Class Counsel, and Scheduling a Final Approval Hearing, filed October 26, 2023 (the “Amended Joint Motion”).

Based on the written submissions and evidence presented in connection with the Amended Joint Motion, including the Parties’ supplemental submissions following the Court’s November 20, 2023, conference, the Court makes the following findings and determinations only for purposes of effectuating the class action settlement currently before the Court:

IT IS HEREBY DETERMINED AND ORDERED:

1. The settlement proposed in the Amended Settlement Agreement and Release, dated October 25, 2023, a copy of which is attached as Exhibit A to the Amended Joint Motion, as amended by the First Amendment to the Amended Settlement Agreement, dated December 1, 2023, a copy of which is attached as Exhibit A to the Parties’ supplemental submission following the Court’s November 20, 2023, conference, as further amended by the Second Amendment to the Amended Settlement Agreement, dated February 5, 2024, an executed copy of which has been filed with the Court on February 12, 2024, and as further amended by the Third Amendment to the Amended Settlement Agreement, dated March 1, 2024, a partially executed copy of which was filed with the Court on March 1, 2024 (hereinafter collectively,

the “Amended Agreement”), is within the range of possible settlements suitable for final approval as fair, just, equitable, reasonable, adequate, and in the best interest of the Settlement Class and Subclasses, and was negotiated at arm’s-length by the Parties.

2. The Amended Agreement is hereby preliminarily approved as fair, reasonable, adequate, proper, and in the best interests of the Settlement Class and Subclasses.
3. Subject to the Amended Agreement, the Court conditionally certifies the following Settlement Class which shall be certified for settlement purposes only:
 - All Attorneys and Insurance Companies, pursuant to written authorization, or Patients who on one or more occasions during the Class Period, sought, in writing, copies of a patient’s medical records from a West Virginia medical provider listed in Exhibit A to the Amended Agreement, and had their Release of Information Request (“ROI Request”) processed and billed by any of the Defendants, and who subsequently: (1) paid one or more Defendants for copies of patient medical records and were not reimbursed for same, or (2) reimbursed their legal representative for the costs advanced on their behalf to obtain copies of medical records, excluding (i) Counsel for the Parties, including their respective law firms during the Class Period, (ii) any and all Persons that paid for the requested copies of medical records pursuant to a specific pricing agreement or a “reduced or negotiated rate” less than or equal to the negotiated per page value identified for each respective Subclass, and (iii) those persons who validly and timely elect to opt out or otherwise exclude themselves from the Settlement Class.
 - The Court finds that the prerequisites for class certification are met.
 1. Settlement Class: The Court has considered the submissions of the parties with regard to the temporary and conditional certification of a settlement class, and has analyzed the proposed settlement class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and makes the following findings:
 - a. Numerosity: The settlement class, consisting of more than 1,000 persons, satisfies the numerosity requirement of Federal Rule of Civil Procedure 23(a) as joinder of such a large group would be impractical.
 - b. Commonality: These are common issues of law and fact relating to whether the Defendants charged a fee in excess of that allowed by W. Va. Code §§ 16-29-1, *et seq.* While this is dependent on whether the actual patient or his/her authorized representative or authorized agent made the request and when request occurred, the class members have been sub-classified by to reflect this. which makes their claims common as to both liability and damages by subclass.

c. Typicality: The claims of the proposed class also satisfy the element of typicality. Rule 23(a) does not require that the claims be identical, just that they arise out of the same legal or remedial theory. *See United Bhd. of Carpenters & Joiners of Am. v. Phoenix Assoc*, 152 F.R.D. 518, 522 (S.D. W. Va. 1994). The named Plaintiffs' claims are typical of the claims of the putative class members, as they are based upon the propriety of allowable charges under the same West Virginia statute related to the costs for copies of medical records as it relates to each defendant.

d. Adequate Representation: There is no evidence that the named Plaintiffs' interests conflict in any way with the other members of the putative class. Instead, the parties' interests appear to be aligned, as they are all seeking to recover for excessive charges for obtaining copies of medical records under W. Va. Code §§ 16-29-1, *et seq.* Additionally, Settlement Class Counsel is experienced in class action and other complex litigation and have worked to prosecute the claims of the class in this matter. Thus, the requirement of adequate representation of the settlement class has been fully met.

e. Predominance of Common Issues. As addressed above, there are common issues that exist between the Plaintiffs and the putative class members. The Rule 23(b)(3) requirement for commonality is similar to the requirement of Rule 23(a)(2). However, Rule 23(b)(3) requires that they predominate. *See 2 Alba Conte & Herbert Newberg, Newberg on Class Actions* §3.24 (4th ed. 2002). The predominance test is met in this case because all of the class members have a common theory under the same two West Virginia code sections. These issues predominate over any individual questions, and the proposed settlement has mooted any problem of manageability that would attend this case if it were to be tried or litigated on a class action basis.

f. Superiority of the Class Action Mechanism. This case is also appropriate for class action status because it would promote both efficiency and uniformity of judgment, as the numerous class members, many of whom would lack the necessary resources, will not be forced to separately pursue claims or execute settlements in various courts.

4. Subject to the Amended Agreement, the Court conditionally certifies the following Settlement Subclasses, which shall be certified for settlement purposes only:
 - Subclass 1: December 1, 2010, to June 5, 2014, ROI requests from Patients, Attorneys and Insurance Companies - any Attorney or Insurance Company, pursuant to written authorization, or Patient who, on one or more occasions between December 1, 2010 and June 5, 2014, sought, in writing, copies of a patient's medical records from a West Virginia medical provider listed on Exhibit A to the Amended Agreement that were serviced by any of the Defendants and paid a per-page fee to obtain the copies;
 - Subclass 2: June 6, 2014 to July 5, 2017, ROI requests from Patients - any Patient who, on one or more occasions between June 6, 2014, and July 5, 2017, sought, in writing, copies of his/her medical records from a West Virginia medical provider listed on Exhibit A to the

Amended Settlement Agreement that were serviced by any of the Defendants and paid a per-page fee to obtain the copies;

- Subclass 3: June 6, 2014 to July 5, 2017, ROI requests from Attorneys and Insurance Companies - any Attorney or Insurance Company, pursuant to written authorization who, on one or more occasions between June 6, 2014, and July 5, 2017, sought, in writing and pursuant to the patient's authorization, copies of a patient's medical records from a West Virginia medical provider listed on Exhibit A to the Amended Agreement that were serviced by any of the Defendants and paid a per-page fee to obtain the copies; and
 - Subclass 4: June 6, 2014 to July 5, 2017, ROI requests from Patients, Attorneys, and Insurance Companies - any Attorney or Insurance Company, pursuant to written authorization, or Patient who, on one or more occasions sought, in writing, copies of a patient's medical records from a West Virginia medical provider listed on Exhibit A to the Amended Agreement that were serviced by any of the Defendants, and paid a retrieval fee assessed by any Defendant between June 6, 2014 and July 5, 2017.
5. The named Plaintiffs, Thomas M. Wilson, Sr., Daniel Halsey as Administrator of the Estate of Tamara Halsey, Jason Grazuties, Sandra Sheppard, Pamela Bradley as Executrix of the Estate of Robert Bradley, and Deborah Martin as Executrix of the Estate of Arvada Martin, Lisa New, and Robert Stratton are designated as representatives of the Settlement Class.
 6. Plaintiffs' Counsel, William Tiano and Cheryl Fisher, and the law firm of Tiano O'Dell, PLLC, 118 Capitol St, Charleston, West Virginia 25301; Steven S. Wolfe of Wolfe of White & Associates, 60 Water Street, Logan, West Virginia 25601; Stephen P. New of Stephen New & Associates, 430 Harper Park Drive, Beckley, West Virginia 25801; Amanda J. Taylor of Taylor, Hinkle & Taylor, 115-½ South Kanawha Street, Beckley, West Virginia 25801; and D. Adrian Hoosier, II, Hoosier Law Firm, PLLC, 213 Hale Street, Suite 100, Charleston, West Virginia 25301, are appointed as Class Counsel.
 7. In the event that (1) the Amended Agreement is terminated pursuant to its terms or the Effective Date does not occur; (2) the Amended Agreement is not approved in all material respects by the Court; or (3) the Amended Agreement, Preliminary Approval Order, Final Approval Order, and/or Judgment are reversed, vacated, or modified in any material respect by this or any other Court, then (a) all orders entered pursuant to the agreement shall be vacated, including, without limitation, the certification of the Settlement Class and all other relevant portions of this Order; (b) the instant action shall proceed as though an agreement had never been reached, with the Parties agreeing to refrain from opposing any resultant application to further extend the discovery period; and (c) no reference to the Amended Agreement, or any documents related there, shall be made for any purpose; provided, however, that if the Parties to the Amended Agreement agree to jointly appeal an adverse ruling and the Amended Agreement, Preliminary Approval Order, Final Approval Order, and Judgment are upheld on appeal in all material respects, then the Amended Agreement, Preliminary Approval Order, Final Approval Order, and Judgment shall be given full force and effect. In the event of (1), (2), or (3) of this Paragraph, all Parties reserve all of their rights existing prior to the execution of the Amended Agreement (including, but not limited

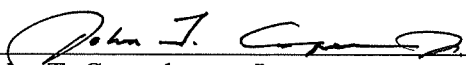
to, Defendants' right to oppose certification of any class), and the doctrines of res judicata and collateral estoppel shall not be applied.

8. A hearing on the fairness and reasonableness of the Agreement and to determine whether final approval shall be given to it and the request for attorneys' fees and costs by Class Counsel will be held before this Court on **July 11, 2024, at 10:00 a.m.** (the "Final Approval Hearing"). Class Counsel are to file their petition for attorneys' fees and costs at least twenty (20) days prior to the Final Approval Hearing. The Final Approval Hearing may be adjourned or continued by the Court without further notice to the Persons in the Settlement Class.
9. The Court approves the proposed form of notice to the class (the "Class Notice"), attached as Exhibit C to the Amended Agreement. As soon as practicable after receiving preliminary Court approval of the Amended Agreement and by no later than forty-five (45) days following entry of this Order granting preliminary approval, Claims Administrator will mail Class Notice to each potential member of the Settlement Class on the Class List at the address reflected thereon or the email address obtained from the West Virginia State Bar. The Class List shall be updated by the national change of address resources offered by the United States Postal Service, prior to the mailing of the Class Notice. As outlined in greater detail in the Amended Agreement, Class Notice will, *inter alia*, direct persons to the **Settlement Webpage, which will publish and make available for download the Proof of Claim and Full Class Notice, provide information as to how persons in the Settlement Class may submit Proof(s) of Claim, and provide an avenue for persons to submit Proof(s) of Claim electronically.** Defendants may make changes to the Class Notice and/or Proof of Claims forms either by agreement with Class Counsel or with the Court's approval. All expenses of such notice shall be paid by Defendants as outlined in the Amended Agreement.
10. The Class Notice constitutes the best notice practicable under the circumstances, is reasonably calculated to communicate actual notice of the litigation and proposed settlement to persons in the Settlement Class, and is due and sufficient notice to all persons entitled to notice of the settlement of this Action.
11. Class Members have until **June 18, 2024**, to object to the proposed Amended Agreement in writing. Any Class Member may object to the Amended Agreement by filing with the Court a written objection that includes: (a) proof of membership in the Settlement Class including, but not limited to, the full name and address of the objector and the name of the patient(s) for whom the copies of medical records were requested; (b) the specific grounds for the objection and the reasons why such Class Members desire to appear and/or be heard; and (c) all documents or writings that such Class Member desires the Court to consider. In order for any objection to be valid, the Class Member responsible for paying or reimbursing the individual that paid Defendants for copies of medical records must: (1) sign the objection; (2) verify that they are the Person who paid out-of-pocket for the costs to obtain the copies of medical records from Defendants during the Class Period; and (3) identify the ROI Request(s) providing them standing to assert an objection.

12. Any Class Member wishing to object to the proposed settlement also may appear in person at the Final Approval Hearing in lieu of or in addition to submitting a written objection. A Class Member who wishes to object in person at the Final Approval Hearing must file with the Clerk of the Court a written notice of intention to appear on or before **June 18, 2024**. Any Class member who complies with these requirements may appear in person or through counsel, at his or her expense, at the Final Approval hearing, to present any evidence or argument that may be proper and relevant.
13. Any Class Member who fails to object in the manner prescribed in Paragraphs 11 or 12 shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in the Action. No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Class member shall be received and/or considered by the Court unless submitted within the time specified above and in the Class Notice.
14. The Court approves the Proof of Claim, attached as Exhibit E to the Amended Agreement. Class members may submit Proof(s) of Claim by properly completing all “required” fields denoted therein either **electronically on the Settlement Webpage**, or by mailing them to the address identified on the Proof of Claim form itself. All Proofs of Claim must be submitted **electronically or** postmarked (if mailed) no later than **June 28, 2024**. Any Proof of Claim that is not properly completed, timely submitted/postmarked, or that does not otherwise comply with the terms of the Amended Agreement shall be deemed invalid and Class Members submitting such claims shall forfeit any right to payment, while the Amended Agreement, subject to final approval, shall in all other respect be fully enforceable against them.
15. Subject to final approval of the proposed settlement and Amended Agreement, and subject to the Parties providing Class Notice in accordance with this Order, the Court approves the provisions of the Amended Agreement, rendering the settlement and its Release of claims binding on all Class Members, whether or not they actually received notice of the Action or its settlement or submitted Proof(s) of Claim.
16. In the aid of the Court’s jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all Class Members shall be preliminarily enjoined and barred from commencing or prosecuting any claim or action inconsistent with the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located. Nothing in this Paragraph shall be construed to prevent a Class Member from presenting objections to the Court regarding the Amended Agreement in accordance with Paragraphs 11 and/or 12 of this Order.
17. The matter of Wilson, et al. v. MRO Corporation, et al., is hereby stayed pending the Final Approval Hearing. The parties shall cease all litigation of this matter unrelated to settlement, including any action related to pending discovery motions, without prejudice to any party.

18. Briefing of written objections to the Amended Agreement shall occur in accordance with the following schedule: (a) any written objections by Class Members and any other papers in opposition to the Amended Agreement shall be filed with the Court as provided above on or before **June 18, 2024**; (b) all responses to objections shall be filed with the Court on or before **June 28, 2024**; and (c) all replies in support of objections shall be filed with the Court on or before **July 8, 2024**.

DATED: March 5, 2024



John T. Copenhaver, Jr.
Senior United States District Judge