



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
IN RE: RALEIGH HEART CLINIC LITIGATION, CIVIL ACTION NO. 18-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

**AGREED ORDER APPROVING SETTLEMENT BETWEEN PLAINTIFFS AND
DEFENDANT, CARDINAL HEALTH 414, LLC**

FACTS AND PROCEDURAL HISTORY

1. On December 6, 2019, came the parties, by counsel, for a hearing to approve the settlement between Plaintiffs and Defendant, Cardinal Health 414, LLC.

2. On May 1, 2018, then Chief Justice Margaret L. Workman referred the Raleigh Heart Clinic Cases to the Mass Litigation Panel by Administrative Order. Undersigned counsel currently represents eighty-four (84) individual Plaintiffs (collectively referred to as "Plaintiffs") in civil actions pending before the Mass Litigation Panel.

3. The actions (hereinafter, "Raleigh Heart Clinic Litigation") arise from multiple patients allegedly contracting viral hepatitis B and C following stress test procedures performed by Thair Barghouthi, M.D. and the Raleigh Heart Clinic, Inc. (hereinafter, "RHC Defendants"). It is alleged that Dr. Barghouthi reused syringes and vials of injectable medicine on multiple patients, resulting in the spread of viral hepatitis B and C. The injectable medicine involved in these cases is Cardiolite, and/or generic ^{99m}Tc sestamibi. It is alleged that this nuclear medicine was supplied exclusively by Cardinal Health 414, LLC ("Cardinal Health") during the relevant time period. It is further alleged that Cardinal Health prepared, packaged, and distributed Cardiolite/^{99m}Tc sestamibi in such a way as to encourage multiple uses from each vial, resulting in the spread of blood borne pathogens and corresponding injuries to Plaintiffs. The actions were filed against RHC Defendants and Cardinal Health.

4. On August 20, 2019 the Mass Litigation Panel approved a settlement between one hundred twenty-four (124) individual Plaintiffs and the RHC Defendants. *Order Approving Settlement Between Plaintiffs and Defendants, Thair Barghouthi, M.D. and Raleigh Hearth Clinic, Inc., and Update on Status of Informed Consent of All Individual Plaintiffs* (Transaction ID 64112130).

5. Thereafter, Plaintiffs and Cardinal Health continued to litigate the case and ultimately engaged the services of a private mediator, Charles Piccirillo, Esq., to conduct another mediation, which was held on November 11th and 12th, 2019.

6. Prior to the mediation, all eighty-four (84) Plaintiffs provided authority for Plaintiffs' lead and liaison counsel to mediate and reach a proposed aggregate settlement that counsel believed to be fair and reasonable. Additionally, all eighty-four (84) Plaintiffs agreed, in writing, to be bound by 75% majority vote on any proposed aggregate settlement pursuant to Rule 1.8 of the West Virginia Rules of Professional Conduct.

7. A proposed aggregate settlement was reached by Plaintiffs' counsel and Cardinal Health's counsel two days after the mediation. The proposed settlement terms are outlined in **Exhibit A**, which was filed December 5, 2019 (Transaction ID 64490312). **Exhibit A** (Transaction ID 64490312) contained confidential settlement information, and was therefore filed under seal with only the Presiding Judges, the Mass Litigation Manager, and all counsel allowed access thereto.

8. After receipt of the proposed aggregate settlement, which Plaintiffs' counsel believed to be fair and reasonable, every individual plaintiff was informed, in writing, of how the settlement terms apply to their individual cases. An example of this form letter and an explanation of the formula are included in **Exhibit B (Exhibit B contains 3 attachments)** which

was filed December 5, 2019 (Transaction ID 64490362). **Exhibit B** (Transaction ID 64490362) contained confidential settlement information, attorney client communication, and work-product, and was therefore filed under seal with only the Presiding Judges, the Mass Litigation Manager, and Plaintiffs' counsel allowed access thereto.

9. After communication of the proposed aggregate settlement, 100% of the Plaintiffs voted affirmatively to accept the aggregate settlement and the formula as it applied to their individual case.

RULINGS

The Presiding Judges have reviewed and considered *Plaintiffs' Motion to Approve Settlement with Defendant, Cardinal Health, 414, LLC* (Transaction ID 64438238). Having conferred with one another to ensure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a), the Presiding Judges unanimously **FIND** that:

1. Pursuant to Administrative Order entered on May 1, 2018, then Chief Justice Margaret L. Workman referred the Raleigh Heart Clinic Litigation to the Mass Litigation Panel. "An order from the Chief Justice granting a Motion to Refer to the Mass Litigation Panel is a transfer of Mass Litigation to the Panel." Trial Court Rule 26.07(a).

2. The Supreme Court has adopted "a process for efficiently managing and resolving mass litigation which includes the establishment of a Mass Litigation Panel." Trial Court Rule 26.1.

3. Pursuant to Trial Court Rule 26.05(a), the Panel has a duty to "develop and implement case management and trial methodologies to fairly and expeditiously resolve Mass Litigation referred to the Panel by the Chief Justice." The Panel shall "take such action as is

reasonably necessary and incidental to the powers and responsibilities conferred by this rule or by the specific directive of the Chief Justice.” Trial Court Rule 26.05(f).

4. After considering the due process rights of the parties, the Presiding Judge assigned to Mass Litigation is authorized “to adopt any procedures deemed appropriate to fairly and efficiently manage and resolve Mass Litigation.” Trial Court Rule 26.08 (d).

5. Pursuant to the Mass Litigation Panel’s inherent authority and duty under Trial Court Rule 26 to fairly and efficiently manage and expeditiously resolve Mass Litigation, the Panel is obligated to protect all Plaintiffs in Mass Litigation referred to the Panel where the amount of damages may exceed the funds available to settle all cases, and to ensure that Mass Litigation proceedings do not put one Plaintiff or action in a better position in terms of resolution than any other Plaintiff or action referred to the Panel.

6. Recognizing the potential for conflicts of interests and the risk of unfairness to individual litigants, the Panel instituted a procedure for conducting fairness hearings in Mass Litigation cases where there are aggregate settlements. See e.g., *In Re: Flood Litigation*, Civil Action No. MC Flood 7/8/2001; *In Re: Mingo County Coal Slurry Litigation*, Civil Action No. 10-C-5000; and *In Re: Float-Sink Litigation*, Civil Action No. 11-C-5000000.

7. Subsequently, the Supreme Court amended Rule 1.8 of the Rules of Professional Conduct and added a number of Comments, including Comments [13-18], which became effective on January 1, 2015. Rule 1.8(g) provides that, “A lawyer who represents two or more clients shall not participate in making an aggregate or mass tort settlement of the claims of or against the clients...unless each client gives informed consent, in writing signed by the client.” Comments [13-18] to Rule 1.8 extensively discuss the potential for conflicts of interest and unfairness to individual litigants in aggregate and mass tort settlements. Significantly, Comment

[13] to Rule 1.8 provides that “[a] non-class action aggregate or mass tort settlement is a settlement of the cases of two or more individuals in which the settlement of the case *is not based solely on individual case-by-case settlement negotiations*. In such situations potential conflicts of interest exist, thus posing a risk of unfairness to individual litigants.” (Emphasis added).

8. An aggregate settlement is not required in all cases assigned to the Mass Litigation Panel, and no order has been entered by the Panel in the Raleigh Heart Clinic Litigation, or any other litigation for that matter, which requires the parties to enter into an aggregate settlement. That being said, the Panel is advised that Cardinal Health has tendered an aggregate amount for the settlement of all actions.

9. Upon review of the submission of the parties and oral arguments, the Panel finds that it is in the best interest of all Plaintiffs to approve the proposed settlement offer negotiated between the above-referenced parties and previously disclosed to the Panel through the *Plaintiffs’ Motion to Approve Settlement with Defendants* and **Exhibit A** (Transaction ID 64490312).

10. After being advised of the settlement details and their prospective individual settlements, all Plaintiffs gave informed consent of the settlement in writing, as required by Rule 1.8.

11. It is in the best interest of all Plaintiffs to approve the settlement with Cardinal Health, as all Plaintiffs have consented to the same.

12. Additionally, the Panel finds that Plaintiffs’ counsel has complied with the Rule of Professional Conduct in keeping their clients informed of the mass settlement offer and

ultimately getting informed consent from 100% of the Plaintiffs in writing and executed Settlement and Release Agreements from 100% of the Plaintiffs in writing.

13. Plaintiffs' counsel shall begin to disburse the settlement monies as to not further delay the proceedings and the distribution of funds to individual plaintiffs. The disbursement of these funds shall be in accordance with **Exhibit B** (Transaction ID 64490362).

Based upon the foregoing, the Court hereby ORDERS that:

14. Cardinal Health shall wire Plaintiffs' lead counsel (The Segal Law Firm) the settlement proceeds into the Segal Law Firm's IOLTA account by December 13, 2019. Cardinal Health's objection to this funding date is specifically noted.

15. Upon entry of this order, The Segal Law Firm may disburse all settlement funds to each individual Plaintiff's firm to be further disbursed to their individual Plaintiffs in accordance with their contract for legal services and the previously entered into informed consent letter and **Exhibit B** (Transaction ID 64490362). It is expressly understood that each respective firm may take its contracted fee and expenses for each individual case.

16. Upon disbursement of any retained common funds pursuant to **Exhibit B** (Transaction ID 64490362) Plaintiffs' counsel shall send Exhibit B3 to each individual client.

17. Upon receipt and disbursement of the monies as outlined herein and in the confidential exhibits, Lead Plaintiffs' Counsel shall inform the Mass Litigation Manager, Kim Fields, that the entirety of the cases can be dismissed with prejudice.

18. All objections and exceptions to the Court's rulings are preserved as to each party.

19. Cardinal Health's cross claims against the RHC Defendants are not affected by entry of this Order.

A copy of this Order has been electronically served on all counsel of record this day via File & ServeXpress.

It is so **ORDERED**.

ENTERED: December 9, 2019.

/s/ Jay M. Hoke
Lead Presiding Judge
Raleigh Heart Clinic Litigation

Prepared by:

/s/C. Edward Amos
Scott S. Segal (WV Bar #4717)
C. Edward Amos, II (WV Bar #12362)
THE SEGAL LAW FIRM
A Legal Corporation
810 Kanawha Boulevard, East
Charleston, West Virginia 25301
Telephone: (304) 344-9100
Facsimile: (304) 344-9105
Lead Counsel for Plaintiffs

Seen and agreed to by:

/s/Marc E. Williams
Marc E. Williams (WVSB #4062)
Christopher D. Smith (WVSB #13050)
Nelson Mullins Riley & Scarborough, LLP
949 Third Avenue, Suite 200
Huntington, WV 25701
Telephone: (304) 526-3500
Fax: (304) 526-3541
Co-Lead Counsel for Cardinal Health 414, LLC

Cheryl A. Falvey, Esq.*
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20001
Telephone: (202) 624-2675
Fax: (202) 628-5116
Co-Counsel for Cardinal Health 414, LLC

*Cheryl A. Falvey is admitted *Pro Hac Vice*