

**IN THE LAW COURT FOR SULLIVAN COUNTY
AT KINGSPORT, TENNESSEE**

HIGHLANDS PHYSICIANS, INC.,)
a Delaware corporation,)
for itself and as representative)
of a class of itself and its members,)
)
Plaintiff,)
)
v.)
)
WELLMONT HEALTH SYSTEM,)
)
Defendant.)

Civil Action No. C41368(C)

FILED
8 | 17 | 21 | 2:45 pm
Bobby L. Russell *(Signature)* DC
CIRCUIT COURT CLERK
SULLIVAN COUNTY, TN

ORDER AND FINAL JUDGMENT

This matter having come before the Court on the Parties' Joint Motion for Final Approval of Class Settlement ("the Motion"), the Court having reviewed in detail and considered the Motion, the Settlement Agreement and Release ("Agreement" or "Settlement"), and all other papers that have been filed with the Court related to the Agreement, including all exhibits and attachments to the Agreement and the parties' filings in support of the Motion, and all matters raised at the Final Approval Hearing held on August 12, 2021, the Court having determined that due notice of said hearing was given in accordance with the Court's Preliminary Approval Order Granting Joint Motion for Preliminary Approval of Class Settlement, dated June 7, 2021 ("Preliminary Approval Order"), and that said notice was adequate and sufficient; and the parties having appeared by their attorneys of record; the attorneys for the respective parties having been heard in support of the proposed settlement of the Action; an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court and the Court being fully advised in the premises, **IT IS HEREBY ORDERED AS FOLLOWS:**

BACKGROUND

1. Unless otherwise noted, all capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Agreement. The Court refers to Highlands Physicians, Inc. (“HPI”), the Class, and Wellmont Health System (“Wellmont”) collectively as the “Parties.”

2. HPI brought this class action lawsuit against Wellmont in February of 2016. This Court certified the Class on July 27, 2017.

3. The case was tried to a jury in December 2018. On December 18, 2018, the jury rendered its verdict and awarded roughly \$58 million in damages to the Class. On January 22, 2019, pursuant to the jury verdict, this Court entered a judgment against Wellmont in the amount of \$57,959,053 (the “Judgment”). Following entry of the Judgment, by order entered on March 28, 2019, this Court found that Wellmont must pay the attorneys’ fees, expenses, and discretionary costs incurred by HPI in the Action. By orders dated May 22, 2019 and June 24, 2019, this Court set the amount of attorneys’ fees and expenses Wellmont was obligated to pay (the “Attorneys’ Fee Award”). On March 28, 2019, this Court entered a Restraining Order against Wellmont prohibiting Wellmont from engaging in actions contrary to the Judgment (the “Injunction”).

4. On September 25, 2020, the Court of Appeals issued an opinion affirming the Judgment and the Injunction, reversing the Attorneys’ Fee Award, limiting the Class to those who were members of HPI between June 22, 2012 and February 2, 2016, and remanding the Action to this Court for a jury trial on the issue of attorneys’ fees and costs.

5. On March 17, 2021, the Tennessee Supreme Court denied Wellmont’s TRAP 11 Application, and, on March 18, 2021, a mandate was issued ending the appeal.

6. On May 4, 2021, this Court entered an order that granted preliminary approval to HPI’s proposed plan for the initial distribution of damages, appointed CPT Group, Inc. (“CPT

Group”) to be the class action administrator, and ordered Wellmont to pay into an escrow account administered by CPT Group the amount of \$67,086,667.00 to fully satisfy the Judgment and all accrued post-judgment interest.

7. On May 13, 2021, Wellmont paid \$67,086,667.00 to the escrow account administered by CPT Group.

8. On May 27, 2021, following a lengthy mediation process and arm’s length negotiations, the Parties executed the Agreement, attached hereto as Exhibit A, to resolve certain claims among Wellmont, HPI and the Class Members, including but not limited to the Action, the Judgment, the Injunction and the Attorneys’ Fee Award.

9. On June 7, 2021, this Court entered the Preliminary Approval Order, whereby this Court granted preliminary approval to the settlement, approved the form, content and method of dissemination of the Settlement Notice and set a final hearing for August 12, 2021 (“Final Approval Hearing”).

10. The Settlement Notice approved by the Court was disseminated by CPT Group beginning on June 7, 2021—66 days before the Final Approval Hearing.

11. No objections to the Settlement were received by the Court, Class Counsel, or Counsel for Wellmont.

DISCUSSION

12. For the reasons below, the terms of the Agreement are approved as fair, reasonable, adequate, negotiated at arm’s length and in the best interests of the Class Members.

13. The Settlement Notice has been given to the Class (as defined herein) pursuant to and in the manner directed by the Preliminary Approval Order, and a full opportunity to be heard has been offered to all parties, the Class and all other persons in interest. The Court finds and concludes that the form and manner of the Settlement Notice was reasonably calculated to apprise

the Class Members of the Settlement and of their rights to object and to appear at court hearings and was the best notice practicable under the circumstances and fully complies with each of the requirements of Tennessee Rule of Civil Procedure 23, due process, and applicable law, and it is further determined and declared that all members of the Class are bound by this Order and Final Judgment.

14. Based on the record in the Action, the Court reconfirms that the prerequisites to class action treatment under Tennessee Rules of Civil Procedure 23.01 and 23.02(3) have been satisfied. The Court's findings as to the requirements of Rule 23.01 and 23.02(3) have been upheld twice on appeal. Nothing has changed to require the Court to revisit the Rule 23 analysis in its July 27, 2017 class certification order, and the same is true of the adequacy of the class representative and class counsel.

15. The Agreement requires Wellmont to pay \$76 million ("the Settlement Fund"), which includes the \$67,086,667.00 previously paid. The Agreement also requires Wellmont to deposit separately an additional \$6.7 million—which consists of \$7.0 million less \$0.3 million for HPI's repurchase of certain HPI stock—into a bank account owned by the Highlands Wellmont Health Network ("HWHN") in order to provide HWHN with capital anticipated to be needed for future operations of HWHN (or its successor) following Wellmont's exit from HWHN. Thus, the payments under the Agreement amount to \$83 million.

16. The Agreement requires HPI to file with this Court, at least thirty (30) days prior to the Final Approval Hearing, a plan that allocates the Settlement Fund ("Settlement Distribution Plan"), which plan shall supersede the distribution plan preliminarily approved by this Court in an order dated May 4, 2021, as described below:

1. Six Hundred Thirty-Six Thousand Six Hundred Sixty-Six and 74/100 Dollars (\$636,666.74) to HPI for unpaid “tithes” (as defined in the Action), which includes interest at the statutory post-judgment interest rate applicable to the Judgment.
2. One Million Seven Thousand Two Hundred Seven and 00/100 Dollars (\$1,007,207.00) to HPI for unpaid tithes that HPI alleges have accrued since the entry of the Judgment.
3. Three Million and 00/100 Dollars (\$3,000,000.00) to the Settlement Administrator for the Wellmont Indemnity Fund pursuant to the terms of Section 4.
4. Distributions to Class Members that incurred damages as a result of Cigna’s termination of its contract with HWHN in 2013, consistent with HPI’s theory of damages.
5. Distributions to Class Members that incurred damages as a result of the termination of HWHN’s contracts with the direct employers listed on Trial Exhibit 348A, consistent with HPI’s theory of damages.
6. Distributions to Class Members that incurred damages relating to HWHN’s Network Access Agreement with Wellmont, consistent with HPI’s theory of damages.

17. The Settlement Distribution Plan’s allocation(s) to each Class Member will be based on a reasonable estimate of each Class Member’s actual losses within each such category as defined in Section 18(d)-(f) of the Agreement using objective data that is deemed by the Court to

be reasonably reliable. The Settlement Distribution Plan may provide that distributions be made to practice groups.

18. The Agreement also requires that, pursuant to Tennessee Rule of Civil Procedure 23.08, any funds remaining in the Settlement Fund or Net Settlement Fund, other than the Indemnity Fund, eighteen (18) months after the Effective Date shall be deemed “residual funds” and shall be donated to one or more not-for-profit organizations in upper East Tennessee as agreed by HPI and Wellmont, including to East Tennessee State University for the express purpose of supporting the Children and Family Health Institute’s STRONG Accountable Care Community program. All costs associated with the disposition of residual funds shall be paid exclusively from the Settlement Fund.

19. HPI filed the Settlement Distribution Plan with the Court on July 13, 2021. The terms of the Agreement governing the distribution of the Settlement Fund and the Settlement Distribution Plan are hereby approved.

20. The Agreement also calls for the existing Injunction to be vacated, for the entry of an injunction binding on Wellmont as prescribed in Tennessee Rule of Civil Procedure 65 relating to retaliation, and calls for the Court to include the revised injunction in this Final Order and Judgment.

21. “A certified class action shall not be voluntarily dismissed or compromised without approval of the court.” Tenn. R. Civ. P. 23.05. In evaluating a class action settlement, the Court “must determine, not whether the settlement represents the best outcome, but whether it falls within the range of reasonableness.” *In re Pacer Int’l*, 2017 WL 2829856, at *7 (Tenn. Ct. App. 2017) (quotation omitted).

22. The Parties discussed settlement throughout the litigation. During the pendency of the appeal, the Parties continued negotiating with the assistance of an experienced and highly respected California-based mediator with a preeminent national alternative dispute resolution firm—Phillips ADR—to assist with discussions. The Parties continued to engage in settlement discussions with the active assistance of the mediator after the appeal ended. The Parties’ extensive, arm’s length negotiations, conducted with a highly qualified mediator, clearly demonstrate that the Agreement was not procured through fraud or collusion. *See, e.g., Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001); 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (17th ed.).

23. The fact that the Agreement was recommended by Class Counsel and approved by both HPI’s special litigation committee and Board of Directors, and also approved by Wellmont’s Board of Directors, provides an additional reason to approve the Settlement. *See In re Pacer Int’l*, 2017 WL 2829856, at *7.

24. Further, after notice of the settlement was given pursuant to and in the manner directed by the Preliminary Approval Order, no objections to the Settlement were received. The absence of Class Member objections strongly supports the Court’s finding and conclusion that the Settlement is fair, reasonable, adequate, and in the best interests of the Class Members. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 276–77 (6th Cir. 2016) (explaining that the reaction of absent class members is a factor in assessing a class action settlement).

25. The Court also finds that Class Counsel adequately represented the Class Members for purposes of the Settlement.

26. The Settlement provides \$83 million in monetary and various non-monetary benefits to the Class Members. The monetary portion of the Settlement substantially exceeds the

amount of the Judgment and is reasonable given the risk to the Class Members of continued litigation in this Action.

27. The Settlement also provides substantial benefits to Class Members by providing HPI the means to establish a new network that does not include Wellmont.

28. For these reasons, the Court find that the Settlement is fair, reasonable, adequate, negotiated at arm's length and in the best interests of the Class Members, and it is hereby approved pursuant to Tennessee Rule of Civil Procedure 23. HPI, Wellmont and their respective counsel, are hereby authorized and directed to implement and consummate the Agreement according to its terms and provisions. This Court declares that the Agreement is binding on all Class Members.

29. The Court has personal jurisdiction over all Parties to the Action and has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, including all exhibits thereto, and this Order and Final Judgment.

30. The Judgment, the Injunction, and the Attorneys' Fee Award are hereby vacated, and the Action is dismissed on the merits with prejudice as to all Defendants in the Action and against Plaintiffs and all other members of the Class on the merits, with court costs assessed to HPI, which costs shall be paid from the Settlement Fund.

31. HPI and all Class Members and their respective successors and assigns (collectively, the "HPI Releasing Parties"), are deemed hereby, as of the Effective Date of the Agreement, to have fully and irrevocably released and forever discharged Wellmont and/or any of its corporate parents, affiliates or subsidiaries and each and all of its respective past, present or future officers, directors, shareholders, representatives, employees, attorneys (including all counsel who filed an appearance for Wellmont in the Law Court of Sullivan County, the Tennessee Court of Appeals, or the Tennessee Supreme Court), advisors, consultants, insurers, members,

predecessors, successors and assigns (collectively, the “Wellmont Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, accrued or unaccrued, liquidated or unliquidated, legal, statutory or equitable, through the Effective Date, that result from, arise out of, or are based upon or could have been based upon, omissions, duties, matters or facts that were alleged in the Action or out of the prosecution, defense or conduct of the Action (collectively, the “HPI Settled Claims”), except for claims to enforce the terms of the Agreement, which are expressly excluded from the HPI Settled Claims.

32. Wellmont and its respective successors and assigns (collectively, the “Wellmont Releasing Parties”), are deemed hereby, as of the Effective Date of the Agreement, to have fully and irrevocably released and forever discharged HPI, the Class Members, and/or any of their parent entities, associates, affiliates or subsidiaries and each and all of their respective past, present or future officers, directors, shareholders, representatives, employees, attorneys (including Class Counsel and all counsel who filed an appearance for HPI in the Law Court of Sullivan County, the Tennessee Court of Appeals, or the Tennessee Supreme Court), members, personal representatives, estates, heirs, administrators, predecessors, successors and assigns (collectively, the “HPI Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, accrued or unaccrued, liquidated or unliquidated, legal, statutory or equitable, through the Effective Date, that result from, arise out of, or are based upon or could have been based upon, omissions, duties, matters or facts that were alleged in the Action or out of the prosecution, defense or conduct of the Action (collectively, the

“Wellmont Settled Claims”), except for claims to enforce the terms of the Agreement, which are expressly excluded from the Wellmont Settled Claims.

33. The releases in the above paragraphs extend to claims that the HPI Releasing Parties and the Wellmont Releasing Parties (together, the “Releasing Parties”) do not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into the releases. The Releasing Parties are hereby deemed to have waived any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person’s release of unknown claims.

34. The Releasing Parties are hereby permanently barred and enjoined from asserting any of the Released Claims at any time, including during any appeal from this Order and Final Judgment.

35. In connection with the Settlement, Class Counsel and HPI have requested an award of attorneys’ fees and expenses pursuant to Tennessee Rule of Civil Procedure 23.05 for the efforts of Class Counsel and HPI in filing, prosecuting and resolving the Action, with such fees and expenses to be paid exclusively from the Settlement Fund. Specifically, Class Counsel and HPI have requested attorneys’ fees in the amount of Eighteen Million and 00/100 Dollars (\$18,000,000.00) to be paid to Class Counsel; expenses in the amount of Two Million, Four Hundred Sixteen Thousand, One Hundred Sixty-Four and 17/100 Dollars (\$2,416,164.17) to be paid to HPI for expenses incurred in connection with this litigation; and Twenty Thousand and 00/100 Dollars (\$20,000.00) to be paid to CPT Group for its services as class administrator. The Court awards attorney’s fees and expenses in the amount of Twenty Million, Four Hundred and Thirty-Six Thousand, One Hundred and Sixty-Four and 17/100 Dollars (\$20,436,164.17), which

the Court finds to be fair and reasonable, and which shall be paid from the Settlement Fund in accordance with the terms of the Settlement.

36. The effectiveness of this Order and Final Judgment and the Settlement is not conditioned upon or subject to the resolution of any appeal that relates solely to any failure by the Court to award attorneys' fees and expenses to Class Counsel, or reduction of any such award on appeal.

37. The Court hereby enjoins Wellmont as set forth in Section 8 of the Agreement, which states as follows:

8. No Retaliation. Wellmont shall not Retaliate against any officer, director, employee, or individual physician-member of HPI or any trial witness for HPI in the Action (an "HPI Participant") for the HPI Participant's participation in the Action, including by making decisions, testifying, or otherwise assisting HPI's effort in the Action; or advancement of HPI's interests in the Action (the "Protected Conduct"). Except as otherwise provided for herein, application of this Section 8 is strictly limited to the HPI Participants listed on *Exhibit D*. Following the execution of this Agreement, HPI may not add to the parties listed on *Exhibit D* without Wellmont's consent.
 - (a) With respect to HPI Participants, this Section 8 shall be null and void when the HPI Participant ceases to be affiliated with or employed by HPI or is no longer engaged in the full-time practice of medicine. HPI shall update the list of all HPI Participants to whom Section 8 applies on a quarterly basis to reflect the removal of HPI Participants and provide that list to Wellmont. Any disputes over whether Section 8 applies to a person claiming Retaliation shall be resolved pursuant to Section 8(d) of this Agreement.
 - (b) This Section 8 shall also apply to any physician practice group with which an HPI Participant is affiliated or employed; provided, however, that any such physician practice group is listed on *Exhibit D*. No physician practice group may invoke this Section 8 unless it is affiliated with or employs an HPI Participant who is engaged in the full-time practice of medicine.
 - (c) For purposes of this Section 8, the terms "Retaliate" and "Retaliation" shall have the same meaning as applied in decisions of the federal courts involving claims for retaliation in employment and shall be specific to actions that: (i) Wellmont would not have taken but for the HPI Participant's participation in the Protected Conduct; and (ii) have a material adverse effect on (a) the HPI Participant's ability to practice medicine or treat patients or, (b) with respect to non-physicians, the HPI Participant's ability

to work in the person's present occupation in the geographic area served by Ballad.

- (d) Any HPI Participant claiming Retaliation under this Section 8 (a "Dispute") must first give written notice to Wellmont that provides reasonable details of the Dispute (the "Dispute Notice"). Following receipt of a Dispute Notice, the parties to the Dispute shall use good faith efforts to resolve the Dispute. Failing resolution of the Dispute within forty-five (45) days after a Dispute Notice is received, the parties to the Dispute shall submit the Dispute for mediation with Gregory P. Lindstrom or another mediator as agreed to by the parties. The costs of any such mediation, excluding attorneys' fees and expenses, shall be borne 70% by Wellmont. Failing resolution of the Dispute within fifteen (15) days after the conclusion of such mediation, the Dispute shall be resolved by binding arbitration in Tennessee with the American Arbitration Association pursuant to its Commercial Arbitration Rules and Tennessee law, before a single arbitrator with knowledge and experience in the subject matter(s) relevant to the dispute. The costs of any such arbitration, excluding attorneys' fees and expenses, shall be borne 70% by Wellmont. Any arbitration decision may be confirmed in state or federal court pursuant to the Federal Arbitration Act. Any failure to comply with a confirmed arbitration decision may be enforced as a violation of the Revised Injunction. For avoidance of doubt, no court action for Retaliation may be instituted or proceed until the procedures set forth in this Section 8(d) are exhausted.
- (e) An HPI Participant must give written notice to Wellmont and initiate the procedures specified in this Section 8 within one (1) year of the date the HPI Participant knows or should know of the basis of the claim for Retaliation.
- (f) The Parties agree that, upon implementation of a reasonable policy and procedure at Wellmont for compliance with the Revised Injunction, no officer, director, employee or agent of Wellmont and/or any of its corporate parents, affiliates or subsidiaries can be held in violation of the Revised Injunction for failure to supervise or any other indirect theory of responsibility, to the extent such acts or omissions could otherwise be subject to the Revised Injunction.
- (g) The Parties shall memorialize this Section 8 in the Final Approval Order in the form of an injunction to be entered by the Trial Court binding Wellmont as prescribed in Tennessee Rule of Civil Procedure 65 (the "Revised Injunction"). Wellmont shall provide a paper or electronic copy of the Revised Injunction to each of its present officers and directors and to each person who newly assumes any such role in the future.

38. Class Counsel and counsel for Wellmont are hereby authorized, without further approval from the Court, if they agree in writing, to adopt such modifications to the Agreement and its implementing documents as shall be consistent in all material respects with this Order and Final Judgment, which shall not affect the finality of this Order and Final Judgment for purposes of appeal.

39. Neither the Settlement, this Order and Final Judgment, nor any act performed or document executed pursuant to or in furtherance of the Settlement is or may be deemed to be or may be used as an admission of, concession of, or evidence of liability by any Party to the Agreement.

40. The Court further orders, adjudges, and decrees that all other relief be, and is hereby, denied, and that this Order and Final Judgment disposes of all the claims of all the Parties in the above-styled and numbered action.

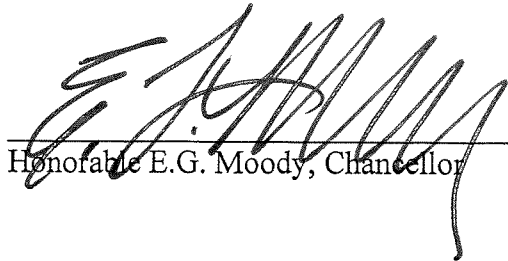
41. Without affecting the finality of this Order and Final Judgment in any way, this Court retains jurisdiction over the enforcement of the Court's injunctions.

42. Without affecting the finality of this Order and Final Judgment in any way, this Court retains continuing and exclusive jurisdiction over any Party to the Agreement, including all Class Members, to administer, supervise, construe and enforce the Agreement in accordance with its terms.

43. This Order and Final Judgment is a final order and is immediately appealable.

44. Pursuant to Tenn. R. Civ. P. 58, the Clerk shall make appropriate docket notations and shall copy this Order and Final Judgment on the minutes. Additionally, the Clerk shall forthwith mail a copy of this Judgment to all counsel of record.


ENTERED:



Honorable E.G. Moody, Chancellor

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Order and
been served upon J. Ford Little, WOOLF, McCLANE, BRIGHT, ALLEN & CARPENTER,
PLLC, 900 Riverview Tower, 900 S. Gay Street, Suite 900, Knoxville, TN 3 7902; Gary Elden,
SHOOK, HARDY & BACON L.L.P., 111 South Wacker Drive, Suite 5100, Chicago, IL 60606,
and Richard Ladd, Jr., PennStuart, 804 Anderson St., Bristol, TN 37620 by placing a copy of
same in the U. S. Mail, postage prepaid, on this the 18th day of August, 2021.



Clerk