

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA**

MICHELLE HARRIS-BARBER
individually and on behalf of all other
similarly situated individuals,

Plaintiffs,

vs.

UPMC-PRESBYTERIAN SHADYSIDE,

Defendant.

CIVIL DIVISION

No. GD: 18-012330

**FINAL JUDGMENT APPROVING SETTLEMENT, PAYMENT OF INCENTIVE
AWARDS AND ATTORNEYS' FEES AND ORDER OF DISMISSAL WITH
PREJUDICE**

This matter having come before the Court on the Motion of the Parties for Final Approval of settlement, in accordance with a Settlement Agreement ("SA"), by and between UPMC PRESBYTERIAN SHADYSIDE on the one hand, and MICHELLE HARRIS-BARBER, individually and on behalf of all other similarly situated individuals, on behalf of themselves and the members of the proposed class (collectively "Class Members" or "Class Plaintiffs") in the above-styled action (the "Action"), on the other.

WHEREAS, a Fairness Hearing having been held before the Court on February 8, 2024, pursuant to this Court's Order Preliminarily Approving Settlement and Directing Notice to Class (the "Order");

Notice having been given to Class Members pursuant to Order of Court, the respective parties having appeared by their attorneys of record;

The Court having heard and considered the positions advanced in support of the proposed settlement of this Action, the attorneys for the parties having been heard, an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Order

and Notice. The Court having determined that this Action satisfies the requirements of Pa.R.Civ.P. 1702, 1708 and 1709 in an Order dated October 26, 2023 with respect to a class of persons defined as:

All patients of Defendant UPMC, who, as reflected by UPMC's records were potentially exposed to active tuberculosis infection, including those persons who: 1) went to the emergency room of UPMC Presbyterian Shadyside for medical treatment between October 28, 2017, and February 28, 2018; 2) to whom UPMC sent a certified letter dated April 11, 2018, advising them they were at risk of infection or illness; and 3) who thereafter obtained a medical test or tests from UPMC or otherwise.
("Class Members")

Notice to the Class Members having been adequate and sufficient and in compliance with all the requirements of due process;

The Court having determined that it has jurisdiction over the subject matter of the Action and over all parties to the action, including Class Members; and no objections having been filed by Class Members.

After reviewing the Settlement Agreement, considering the record, pleadings and other documents filed in support of the request for final approval of the Settlement, and the presentations of counsel, the Court finds as follows:

1. The question presented on a motion for final approval of a proposed class action settlement is whether the proposed settlement is fair, reasonable and adequate within Pa.R.Civ.P. 1714 in light of the following factors:
 - a. the risks of establishing liability, causation and damages;
 - b. the range of reasonableness of the settlement in light of the best possible recovery;
 - c. the range of reasonableness of the settlement in light of all the attendant risks of litigation;

- d. the complexity, expense and likely duration of the litigation;
- e. the state of the proceedings and the amount of discovery completed;
- f. the recommendations of competent counsel, and;
- g. the reaction of the class to the settlement.

Dauphin Deposit Bank and Trust Co. v. Hess, 556 Pa. 190, 727 A.2d 1076, 1079 (1999)

A. The Risks of Establishing Liability

2. This factor surveys the possible risks of litigation in order to balance the likelihood of success and potential damages against benefit of settlement.

3. The Class Plaintiffs face risks that their claims might be dismissed in total. The Class Plaintiffs face a risk that they may not sufficiently establish that Defendant's conduct was not negligent and, therefore, may not recover actual damages. The Class Plaintiffs face a risk that they may not sufficiently establish any alleged exposure was the cause of any symptoms or damage. The Class Plaintiffs also face risk that the court would not grant certification of the class.

4. These considerations weigh in favor of settlement.

B. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery

5. An assessment of the reasonableness of a proposed settlement seeking monetary relief requires analysis of the present value of the damages a plaintiff would likely recover if successful, appropriately discounted for the risk of not prevailing.

6. The best possible recovery that plaintiffs might achieve would be to recover an amount for individual harm and inconvenience damages and then an additional amount representing punitive damages. The Court allowed a claim for damages for negligence. The

settlement therefore provides relief well within the range of relief that could be obtained at trial.

7. In light of the questions of law and fact present in this litigation as discussed above, the value of the proposed settlement outweighs the mere possibility of future relief. The expense of a trial on the negligence claims and mini-trials on individual class member damages would be substantial. The continued litigation of this matter would require a large expenditure of the court's and the parties' resources.

8. Moreover, in light of the highly contested nature of liability, it is likely that any judgment entered would be the subject of post-trial motions and appeals, further prolonging the litigation and reducing the value of any recovery. Thus, a settlement is advantageous to all concerned. An appeal of a damage award could seriously and adversely affect the scope of an ultimate recovery, if not the total recovery itself.

9. While Class Plaintiffs may be confident of their ability to prevail at trial, no adjudication has been made as to the validity of their claim. The Court also recognizes Defendant has continued to deny all liability and allegations of wrongdoing and that some or all of Class Plaintiffs' claims could have been dismissed in connection with dispositive motions which would surely be filed, if the settlement were not approved.

10. The proposed settlement represents a substantial benefit for the Class Plaintiffs. The settlement provides each class member with the right to recover \$650.00 in damages.

C. The Range Of Reasonableness Of The Settlement In Light Of All The Attendant Risks of Litigation

11. The third *Dauphin* factor is intended to compare the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing with the amount of the proposed settlement.

12. Here, the Plaintiffs faced potential risk that class certification would be denied, that a jury would find that defendant did not act negligently or that a jury would not award any damages. Despite these risks, the settlement confers a recovery based upon an assumption that these risks would be overcome.

13. This factor supports approval of the settlement.

D. The complexity, expense, and likely duration of the litigation

14. Absent the settlement, future proceedings would take a long time and would be costly. Future proceedings would include class certification proceedings, a trial on the merits of the negligence claim, mini-trials on damages, possibly additional objections to class certification and, given the novel legal issues presented, an appeal. Both parties would be required to extensively brief and argue the issues. Whether or not the case proceeded on a class basis, discovery would have to be pursued, dispositive motions filed, and it is highly likely that trial preparation on both sides would be necessary. Given Defendant's vigorous advocacy of the contention that it did not violate the law, it would be unrealistic not to expect appeals from any result reached on the question of liability or of damages.

15. Avoidance of this unnecessary expenditure of time and resources clearly benefits all parties.

E. The Stage of the Proceedings And The Amount of Discovery Completed

16. A settlement should not be approved if the parties do not have an adequate appreciation of the merits of the case.

17. The proposed settlement was reached at a point in the litigation where the Parties

have a clear understanding of the factual basis for the claims and defenses. The Parties had a clear understanding of the class certification issues and the amount of available damages by reason of the class proceedings in the similar case of *Haluska v. Forbes*.

F. The Recommendations of Competent Counsel

18. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate.

19. Here, Plaintiffs' Counsel is experienced in class action and personal injury litigation.

20. This factor further supports approval of the settlement.

G. The Reaction Of The Class To The Settlement

21. On November 21, 2023, notices were individually mailed to Class Members advising them of the terms of the settlement and their right to exclude themselves from the Class. The deadline for Class members to exclude themselves or to object was December 21, 2023.

22. No Class Members have exercised the right to opt out and no objections have been filed to date. This is convincing evidence of the proposed settlement's fairness and adequacy.

23. In conclusion, most if not all of the factors discussed above weigh in favor of the settlement of this class action.

H. The Representative Plaintiffs Are Entitled To An Incentive Payment For Participation In This Action

24. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. The payment of \$7,500 provided to Michelle Harris Barber, is within the range of incentive awards authorized in consumer class actions.

I. Class Counsel Is Entitled To The Requested Attorneys' Fees And Costs As Provided In The Settlement Agreement

25. Upon consideration of the Plaintiffs' Motion and the supporting materials submitted in support of this motion, the Court finds that the \$67,748.00 in fees and \$2,902.00 costs, as negotiated by the parties, is reasonable and appropriate. In so holding, the Court has considered and reviewed the Plaintiffs' Counsel's Motion, Brief and Declarations in support of the request for approval of attorneys' fees and costs in this matter and finds that Plaintiffs' Counsel requests reasonable under the factors set forth in Pa.R.Civ. P. 1717.

26. Upon consideration of the of Plaintiffs' Motion and the supporting materials submitted in support of this motion, the Court finds that the \$8,323.00 cost for the services of Analytics Consulting, LLC, a class action settlement administrator regarding the administration of this settlement is reasonable and appropriate. The Parties have agreed and thus the Court approves that UPMC shall pay the amount of Notice and Administration Expenses without objection.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action, the Class Members, and Defendant.

2. The Settlement Class has been preliminarily certified under Rules Pa.R.Civ.P. 1702, 1708 and 1709 of the Rules of Civil Procedure, with the named plaintiffs in the Action serving as the representatives of the Class. For the reasons stated in the Order of Preliminary Approval, the Court finds that the Settlement Class shall be certified for final settlement purposes.

3. The Settlement Agreement was reached after arm's-length negotiations between the Parties. The Settlement Agreement and the proposed Settlement are fair,

reasonable and adequate, consistent and in compliance with all applicable requirements of the United States Constitution (including the Due Process Clause), the Pennsylvania Rules of Civil Procedure, the Rules of Court and any other applicable law, and in the best interests of each of the Parties and the Class Members. The terms of the Agreement and this Final Judgment are binding on Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and those terms shall have res judicata, collateral estoppel and all other preclusive effect in all pending and future claims, lawsuits or other proceedings, including all forms of alternative dispute resolution, maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this Action or are otherwise encompassed by the release set forth in the Settlement Agreement.

4. The Notice and the notice methodology, implemented pursuant to the Settlement Agreement: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Fairness Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the Pennsylvania Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of Court and any other applicable law.

5. Except as to any individual who has validly and timely requested exclusion from the Settlement Class, of which there are none, this Court hereby dismisses with prejudice and without costs (except as otherwise provided in the Settlement Agreement)

the litigation against Defendant. Plaintiffs and all Class Members and any person or entity acting on their behalf, are permanently barred and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action; and (ii) organizing such non-excluded Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

6. The Lawsuit is hereby dismissed with prejudice.

7. The releases set forth in the Settlement Agreement are hereby approved.

8. Except for the obligations expressly provided for in the SA, Class Members fully and finally release the Defendant from the claims in this action as defined in the SA.

9. The Parties are authorized, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of the Agreement and all exhibits attached hereto as: (i) are consistent with the Final Judgment; and (ii) which do not limit the rights of Class Members under the Agreement.

10. Analytics Consulting, LLC, is designated as the Settlement Administrator with the authority to accept and disburse funds, as directed by the court order and settlement agreement.

11. The Court hereby grants the request for Class Representative Award of \$7,500 to Michelle Harris-Barber. The Class Representative payment will be paid separately in accordance with the terms of the Settlement Agreement.

12. Plaintiffs' Counsel is hereby awarded \$67,748.00 in attorneys' fees to be paid in accordance with the terms of the Settlement Agreement and reimbursement of expenses in the amount of \$2,902.00 is to be paid to counsel as well.

13. Analytics Consulting, LLC is hereby entitled to be compensated \$8,323.00 for its work and service as the Class Administrator.

14. Without affecting the finality of the Final Judgment, the Court shall retain jurisdiction over the Action and the Parties and Class Members, and the administration and enforcement of the Settlement, for a period of three (3) years following entry of this Order.

It is So Ordered.

2/9/2024

BY THE COURT:


_____ J.