

DAVID M. LANDAY,

Representative Plaintiff,

v.

Datavant LLC, as successor in interest
to IOD Incorporated,

Defendant.

CIVIL DIVISION
CLASS ACTION

GD-09-012922

**CORRECTED DECLARATION OF
JAMES M. PIETZ**

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

DAVID M. LANDAY,

CIVIL DIVISION

Representative Plaintiff,

CLASS ACTION

v.

No. GD-09-012922

DATAVANT, LLC as successor in
interest to IOD Incorporated,

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CORRECTED DECLARATION OF JAMES M. PIETZ, ESQ.

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Pursuant to 28 U.S.C. § 1746, I, James M. Pietz, hereby declare as follows:

1. I submit this Declaration in Support of Plaintiffs' Motion For Preliminary Approval Of Class Action Settlement. Initially, I set forth my background and experience in class action and consumer protection litigation in support of Plaintiffs' Counsel's request to be appointed Class Counsel. Next, I set forth my personal experience in litigating this class action matter in this Court, the federal court in Pittsburgh and the Pennsylvania appellate courts.

I. Class Action Experience and Background

2. I have been a member in good standing of the bars of the State of Illinois since 1988 and the Commonwealth of Pennsylvania since 1989. I am admitted to practice before the United States Supreme Court as well as the Second, Third, Fifth, Sixth, Seventh, Eighth, Tenth and the District of Columbia Federal Circuit Courts of Appeal. I am also admitted to practice by the United States District Court for the Northern District of Illinois and the Western District of Pennsylvania.

3. I have been given the highest possible rating (AV) by the Martindale-Hubbell Law Directory.

4. I am a graduate of Marquette University (1982) and the Chicago-Kent College of Law (1987).

5. I am a member of the National Association of Consumer Advocates. (www.naca.net).

6. I have practiced complex class action and consumer protection law the last 35 years in Pittsburgh and on a national basis. From 1990 to 2006, I worked for the law firm of Malakoff, Doyle & Finberg, firm concentrating in consumer class action litigation. From 2007 to 2015, I was the principal lawyer at Pietz Law Office, LLC. On January 1, 2016, I joined the law firm of Feinstein, Doyle, Payne & Kravec, LLC (“FDPK”) as a partner where I worked as such until December 31, 2024. This firm likewise focuses on representing consumers in complex class action litigation. Currently, I am again the principal layer at Pietz Law Office, LLC. where my work focuses on representing consumers in complex class action litigation.

2016 to the Present

7. Currently, I am working as plaintiffs’ class counsel in several class actions pending in Allegheny County. I am working as one of the plaintiffs’ class co-counsel in *Hernandez v. United States Steel*, GD-19-005325, a class action alleging that U.S. Steel engaged in negligence and nuisance as a result of a fire that occurred at its plant in the Mon Valley. On May 12, 2023, Hon. Judge Ignelzi granted class certification for a class consisting of the 22 class-area communities and appointed FDPK as one of the Class Counsel.

8. I am also currently co-counsel in 5 related putative class actions alleging that persons in Pennsylvania or their agents were overcharged in obtaining copies of their medical records by medical record reproduction companies. These cases include *Landay v. Ciox fna Healthport* GD-09-012919; *Landay v. Ciox fna IOD* Case No. GD-09-012922; *Landay. vs. UPMC Presbyterian Shadyside*, Case No. GD-09-012919; *Wayne M. Chiurazzi Law Inc. vs. IOD Corporation*; *Anthony C. Mengine Law Inc. vs. Magee-Womens Hospital of University of Pittsburgh Medical Center*, Case No. GD-09-014785

9. I am also currently working as co-counsel with FDPK in class actions pending in California alleging that automobile insurance companies are engaged in violations of the California anti-discrimination laws in connection with the setting of automobile insurance rates.

10. I have worked on other class actions brought in Allegheny County and the W.D.Pa. *Dahy v. FedEx Ground Package Sys.* No. 2:17-cv-1633, 2018 U.S. Dist. LEXIS 224910 (W.D.Pa. 2018) remanded to Allegheny Common Pleas at NO. GD-17-015638; *Danganan v. Guardian Prot. Servs.* (3d Cir. 2018) 742 F.App'x 634; *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-cv-1370)2020 U.S. Dist. LEXIS 113242 (W.D. Pa); *Walker v. Highmark BCBS Health Options, Inc.*, No. 2:20-CV-01975-CCW) 2021 U.S. Dist. LEXIS 271019 (W.D. Pa. May 14, 2021)

2007 to 2015

11. In this time period in working as the principal at Pietz Law Office, I was appointed class action counsel in a number of class actions, including cases brought under the Fair Credit Reporting Act. (“FCRA”). I was appointed class counsel in one of the first reported class certifications under the FCRA. *See Campos v. ChoicePoint Services, Inc.* 237 F.R.D. 478 (N.D.Ga. 2006) (noting that the action was one of the first cases to enforce the “file disclosure” requirement of the FCRA, and that my adequacy as class counsel was not an issue).

12. I successfully prosecuted other novel, precedent-setting class actions under the FCRA. *See, e.g., Gillespie v. Equifax*, 484 F.3d 938 (7th Cir. 2007) (finding Equifax violated the requirement that a file disclosure be “clear”). I was also lead counsel in a class action seeking to enforce the FCRA’s requirements applicable to an employer’s use of consumer reports to assess the qualifications of prospective employees. *Reardon v. Closetmaid Corp.*, 2011 WL 1628041, at *1 (W.D. Pa. Apr. 27, 2011) (memorandum opinion granting class certification). *Reardon* involved an issue of first impression of whether an employer willfully violates the FCRA by incorporating a release or waiver of rights provision within the required disclosure/consent form to be signed by the prospective employer. *Reardon v. Closetmaid Corp.*, 2013 WL 6231606, at *1 (W.D. Pa. Dec. 2, 2013).

13. I was appointed class counsel in a consumer class action involving the alleged illegal forced placement of property insurance. *Wahl v. ASIC*, 08-555 (N.D. Cal.). Pietz Law Office was co-counsel in an action, certified for settlement

purposes, alleging the negligent supervision of a hospital employee *Hoyman v. UPMC*, GD-12-16636 (Allegheny Cty. 2012). I have also been appointed in other cases raising similar allegations. See *Haluska v. Forbes*, 05-09134 (Allegheny Cty, Pa.) and *Alwine v. SHEC*, GD 12-018715. Pietz Law Office was appointed Plaintiffs' Class Counsel for purposes of a settlement class in *Vincent v. Wolpoff & Abramson*, 08-423 (W.D.Pa. 2008).

1990 to 2007

14. Before establishing Pietz Law Office, I had been employed by the law firm of Malakoff, Doyle & Finberg, P.C. ("MDF") for 17 years from January 1990 until January 2007. MDF or its predecessors had been engaged in prosecuting class actions since 1972. In my work at MDF, I was principally responsible for the prosecution of seven actions involving the allegedly illegal sale and financing of campground timeshare interests. With respect to this litigation, I worked as class counsel in the following cases: See *Zaazouh v. Bank One, C.A.*, No. 89-145 (W.D. Pa. 1989); *Conley v. Bank One*, 4:91-CV-0251 (N.D. Ohio 1991); *Rudnik v. Cortland*, 1120 of 1990 C.D. (Fayette Cty. 1990); *Gogola v. FirstSouth*, No. 1121 of 1990 (Fayette County, Pa. 1990) and *McDonagh v. GEICO Financial*, 4:93 CV 1352 (N.D. Ohio); *Isaak v. Trumbull Savings and Loan*, 4:93 CV 1121 (N.D. Ohio) and *Slentz v. Cortland*, C.A. 4:93 CV 1480 (N.D. Ohio 1993).

15. Additionally, I was principally responsible for handling the firm's prosecution of actions against Metropolitan Life Insurance Company alleging the

fraudulent and deceptive sale of life insurance policies. *see, e.g., State ex. rel. Metropolitan Life v. Starcher*, 196 W.Va. 519, 474 S.E.2d 476 (1996); *Wolbert v. Metropolitan Life*, No. 95-0861 (W.D. Pa.); *Cope v. Metropolitan Life*, 82 Ohio St.3d 426, 696 N.E.2d 1001 (1998). These actions ultimately resulted in the national class settlement at *In Re: Metropolitan Life Insurance Sales Practice Litigation*, 1999 U.S. Dist. Lexis 22688, MDL No. 1091 (W.D. Pa).

16. I also handled numerous appeals in the state and federal courts many of which involved significant, systemic issues in complex consumer class litigation. *Martin v. Franklin Capital*, 393 F.3d 1143 (10th Cir. 2004) (what standard applies under 28 U.S.C. § 1447 for awarding attorneys' fees and costs for defendants' erroneous removal); *Gayman v. Principal Life*, 311 F.3d 851 (7th Cir. 2002) (whether demutualization of life insurer pursuant to state law constitutes "state action" within the meaning of 42 U.S.C. § 1983.); *LaBarre v. Credit Acceptance*, 175 F. 3d 640 (8th Cir. 1999) (whether McCarren-Ferguson Act barred claim under RICO, 18 U.S.C. §1962(c)); *Stewart v. National Education Assoc.*, 05-7140 (D.C. Cir. 2006) (whether demutualization consideration attributable to a group life insurance policy must be held exclusively for the benefit of the insureds under the policy).

II. History of the Course Of Proceedings In This Matter

17. I have been one of Plaintiff's Co-Counsel in this matter since its inception. I was personally involved in and have personal knowledge of the litigation of this matter at every stage of the case, including in the Allegheny

County Common Pleas Court, the Federal District Court in Pittsburgh, the Pennsylvania Superior Court, and the Pennsylvania Supreme Court. Set forth below is a history of the course of proceedings in this matter in which I was personally involved in representing Plaintiff.

18. This class action was initially assigned to the Commerce and Complex Center of the Court of Common Pleas of Allegheny County (“Trial Court”) with other related case.¹ By order of the Trial Court, (ret. Wettick, J.), these related cases (“Coordinated Actions”) were coordinated for pre-trial management. Exhibit 1, Order of Coordination.² Each of the Coordinated Actions arise from the same wrong, namely, the failure of various medical record reproduction companies (“MRRC”s) or health care providers to comply with the 1998 version of the Pennsylvania Medical Records Act, 42 Pa.C.S.A. § 6152 (“MRA”). The 1998 version of the MRA, which was amended in 2012 during these actions, is attached hereto as Exhibit 2.

¹ The remaining pending cases are: *David M. Landay vs. UPMC Presbyterian Shadyside*, GD-09-012919; *David M. Landay vs. IOD*, GD-09-012922; and *David M. Landay vs. UPMC Magee-Womens Hospital*, GD-09-014785. The case of *David A. Neely v. MRO Corporation*, GD-09-012911 (formerly *Wayne M. Chiurazzi Law Inc. v. MRO Corporation*) was the subject of a class action settlement in 2018 and is no longer pending. The case of *Chiurazzi Law, Inc. v. Duplications, Inc.* GD-10-004369 was voluntarily discontinued. Since the entry of this order, the case captions have changed because Mr. Landay has been substituted as the class representative in several of the cases.

² Exhibits referenced herein are contained in Plaintiff’s Separate Appendix in Support of the Motion To For Preliminary Approval.

A. The Initial Complaint's Allegations

19. The initial Complaint in this case was filed on July 15, 2009. Exhibit 3. The Representative Plaintiffs, at the time, included a lawyer who, on behalf of a client, requested medical records from a health care provider and a person who requested medical records from a healthcare provider. Defendant IOD Incorporated 3, at the time was a Medical Record Reproduction Company ("MRRC"), and, as such, specialized in responding – as the health care provider's agent – to medical records requests directed by patients to their health care providers.

20. The Complaint alleged that the 1998 version of the Pennsylvania Medical Records Act ("MRA") provided that patients are entitled to obtain their medical records in return for payment of a fee based upon the MRRC's or health care provider's estimated actual and reasonable costs incurred in retrieving and reproducing the desired records. Exhibit 3 at ¶¶ 2, 8-11.

21. The Complaint alleged that IOD violated the MRA in two material respects: *First*, the Complaint alleges that the MRA required MRRCs such as IOD to establish procedures to identify and disclose to medical records requestors the estimated actual and reasonable cost of retrieving, reproducing and transmitting requested medical records. Exhibit 3 at ¶ 11. The Complaint alleged that IOD did

3 At the time the initial Complaint was filed, the named Defendant was IOD Incorporated. However, in later stages of the proceedings, Ciox Health, LLC was substituted as the named Defendant and thereafter Datavant was substituted. The use of the term IOD refers to the named Defendant.

not have a procedure to identify and disclose its actual or reasonable medical records reproduction costs to Representative Plaintiffs or other similarly situated persons. Exhibit 3 at ¶ 23-24.

22. *Second*, the Complaint alleged that the 1998 MRA only permitted MRRCs to charge and collect a fee based upon the “estimated actual and reasonable cost” of reproduction and transmission, unless such costs were greater than certain statutory maximums set out in the MRA. Exhibit 3 at ¶ 10-11. The Complaint alleges that IOD did not disclose the estimated costs in responding to medical record copy requests as required by § 6152(a)(1) of the MRA, but instead, IOD automatically charged the maximum fees set forth in § 6152(a)(2)(i) for search and retrieval and for making photocopies of paper records, when in fact its estimated actual and reasonable expenses were far less than the statutory maximum fee. Exhibit 3 at ¶ 21. In other words, the Complaint alleged that IOD ignored its statutory duties by failing to disclose its estimated actual and reasonable cost of reproduction, and by failing to provide the requested medical records in exchange for payment of that amount. Exhibit 3 at ¶ 23-26.

23. Based on these allegations, the Complaint against IOD asserted five causes of action: (1) implied breach of contract; (2) restitution; (3) constructive trust; (4) unjust enrichment and (5) declaratory relief. Exhibit 3 at ¶ 55-83.

B. Defendant's Preliminary Objections

24. On September 29, IOD filed preliminary objections. Exhibit 4. IOD argued that it was permitted by law to automatically charge the maximum amounts set forth in the second sentence of § 6152(a)(2)(i) of the 1998 MRA without regard to its “estimated actual and reasonable costs” for the following reasons: 1) Plaintiffs did not allege an implied or express contract; Exhibit 4 at p. 2; 2) Plaintiffs failed to exhaust statutory remedies; 3) Plaintiffs had an adequate remedy at law; and 4) Plaintiffs voluntarily approved to rates in excess of any alleged statutory maximum rate; Exhibit 4 at p.4.

25. In a Memorandum and Order dated February 4, 2010, the Trial Court rejected the argument that the 1998 MRA permitted MRRCs and health care providers to automatically charge the maximum amounts set forth in the second sentence of § 6152(a)(2)(i) of the MRA without regard to their “estimated actual and reasonable costs”. Exhibit 5.4 The Trial Court also overruled the preliminary objections based upon “prior approval” and “voluntary payment”, holding that the applicability of these affirmative defenses could not be decided at the preliminary objections stage. Exhibit 5. On June 17, 2010, in a separate coordinated case, the

4 Representative Plaintiff agreed to the dismissal of the Complaint's equity-based claims (Counts 2-4) in light of the intervening decision in *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 603 Pa. 198, 983 A.2d 652 which held that an MRA violation gives rise to a claim for breach of contract. Exhibit 8, Mem. Op. at p.3, fn. 2. Thus, Plaintiff acquiesced to HealthPort's preliminary objection that equity does not apply where there exists an adequate remedy at law. Exhibit 7 at p. 4-5.

Trial Court over-ruled another defendant's Preliminary Objections by expressly applying the February 10th ruling in the Coordinated Actions to HealthPort. Exhibit 6.

C. The Interlocutory Appeal

26. Following the Trial Court's February 4, 2010 ruling on preliminary objections, a defendant in the Coordinated Actions asked the Trial Court to certify for interlocutory appeal the question of whether the MRA limits medical records reproduction charges to the "estimated actual and reasonable costs" incurred. In a Memorandum and Order dated June 17, 2010, the Trial Court agreed to certify this issue for interlocutory appeal in one of the cases in the Coordinated Actions, namely, *David A. Neely v. MRO Corporation*, GD-09-012911 (formerly *Wayne M. Chiurazzi Law Inc. v. MRO Corporation*), while ordering that the remaining cases in the Coordinated Actions were to continue in litigation before the Trial Court. Exhibit 7.

27. In light of the above, the Trial Court entered the following order in the *MRO* action only:

On this 17th day of June, 2010, upon consideration of defendant's preliminary objections seeking dismissal of plaintiff's Second Amended Complaint *on the ground that plaintiff were not charged any amount for the production of medical records that exceeded the amounts set forth in the second sentence of 42 Pa.C.S. § 6152(a)(2)(i), as adjusted*, it is hereby ORDERED that these preliminary objections are overruled based upon my construction of the relevant provisions of the Medical Records Act as not allowing charges that exceed actual and reasonable expenses.

I am of the opinion that this order of court overruling defendant's preliminary objections involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.

Exhibit 7 at p. 13-14 of 15. (emphasis added).

28. MRO, one of the defendants in the Coordinated Actions, took an interlocutory appeal from the Trial Court's June 17, 2010 Memorandum and Order, and, as noted above, on August 18, 2010, the Superior Court agreed to hear the interlocutory appeal. Thereafter, HealthPort likewise filed an application seeking interlocutory appeal which was denied by the Trial Court. Docket, Doc. 14.

D. The Trial Court's March 2, 2011 Memorandum Overruling Defendant's Motion For Judgment On The Pleadings

29. While the *MRO* test case was working its way through the appeal process in the Superior Court, proceedings in the on-going Coordinated Actions continued in the Trial Court.

30. On October 10, 2010, the Trial Court entered a scheduling order allowing Defendants in the remaining Coordinated Actions to assert motions for judgment on the pleadings. Exhibit 8.

31. On October 15, 2010, IOD filed a motion for judgment on the pleadings in which it argued that the Complaint should be dismissed under the common law "voluntary payment" doctrine, under the "prior approval" provision of the MRA and

because the Complaint did not sufficiently allege a contract between Plaintiff and HealthPort. Exhibit 9.

32. On March 2, 2011, the Trial Court entered a Memorandum and Order overruling the motions for judgment on the pleadings filed by Defendants in the remaining Coordinated Actions. Exhibit 10. With respect to the “prior approval” provision of the MRA⁵, the Trial Court stated as follows: “Because the factual allegations in plaintiff’s complaint do not establish that plaintiff agreed to make payments in excess of those permitted in § 6152(a)(2)(i), I am denying the motion for judgment on the pleadings based upon prior approval.” Exhibit 10 at p. 5-6. With respect to the common law doctrine of “voluntary payment”, the Trial Court concluded that this defense presented issues of fact which could not be resolved via a judgment on the pleadings.⁶ Exhibit 10 at p. 6-8. With respect to whether the Complaint sufficiently alleged an implied contract, the Trial Court found that the complaint alleged an implied contract on the same a basis as found by the Supreme Court in the *Liss & Marion* case. Exhibit 10 at p.

E. The Divided Superior Court Decision

⁵ Section 6152(a)(2)(i) of the 1998 MRA provides as follows: “No other charges for the retrieval, copying and shipping or delivery of medical records other than those set forth in this paragraph shall be permitted *without prior approval* of the party requesting the copying of the medical records.” 42 Pa. C.S. § 6152(a)(2)(i).

33. On August 11, 2011, a divided Superior Court reversed the Trial Court and held that the 1998 MRA does not limit MRRCs and health care providers to their “estimated actual and reasonable cost” of reproducing requested medical records. *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 2011 PA Super 169, 27 A.3d 1272, 1280 (2011), *rev’d*, 626 Pa. 303, 97 A.3d 275 (2014). Exhibit 11. The Superior Court ruled that the rates specified in the MRA, specifically, in the second sentence of 42 Pa.C.S. § 6152(a)(2)(i), constitute “safe harbor rates”, i.e., rates that may be charged in all instances, regardless of the estimated actual and reasonable costs incurred in reproducing requested records. *Id.*

34. The Superior Court rested this interpretation of the 1998 MRA on a single sentence found in the Supreme Court’s *Liss & Marion* opinion: “[W]e turn to the question of whether Appellants breached the parties’ contract by charging rate M (copies from microfilm) rather than rate D (copies from all other media other than microfilm) for copies from electronic records.” *Liss*, 603 Pa. at 215; 983 A.2d at 662.” 27 A.3d at 1280.

35. The Superior Court reasoned that because the Supreme Court used the term “rate” in this sentence rather than the term “price caps”, the second sentence of § 6152(a)(2)(i) of the MRA must be read as identifying “billing rates” and not “price caps”. *Id.* Based on this reasoning, the Superior Court majority concluded that the MRA created “safe harbor rates”, i.e., rates that could be charged in all instances regardless of the actual and reasonable expenses incurred in reproducing

requested records. According to the Superior Court majority, this interpretation of the MRA was mandated by the Supreme Court's decision and stated rationale in *Liss & Marion. Id.*⁷

F. The General Assembly's Amendment Of The MRA After the Supreme Court Allows Plaintiff's Appeal

36. Following the Superior Court's decision, the Plaintiffs filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court. *Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). On February 22, 2012, review was granted on the questions that the Court found to present pure issues of law.

37. Soon thereafter, on May 29, 2012, Senate Bill 1535 was introduced in the General Assembly. Ultimately, the MRA was amended by Act No. 2012-139 which was signed into law by Governor Corbett on July 5, 2012. A copy of Act No. 2012-139 is attached hereto as Exhibit 12. The new law eliminated the right of medical records requesters to obtain copies of medical records based on the estimated actual and reasonable cost of reproducing the records. Under this new 2012 version of the MRA – the version that continues in force to this day – MRRCs may charge the MRA's statutory maximum amounts without regard to their estimated actual and reasonable expenses incurred in reproducing the records.

⁷ Additionally, the Superior Court held the "safe harbor" rates set forth in the MRA did not apply to medical records reproduced in electronic form, only to medical records reproduced in paper form. With respect to claims arising out of charges for medical records reproduced in electronic format, the Superior Court held that the reproduction charges at issue would be permitted by operation of the "voluntary payment" doctrine as well as the "prior approval" provision set forth in § 6152(a)(2)(i) of the MRA. *Id.* at 1281.

38. On July 12, 2012, Appellee MRO filed Act 2012-139 as supplemental authority with the Supreme Court and requested that the Court summarily affirm the Superior Court decision, or alternatively, to dismiss the appeal as improvidently granted. See Appendix, Exhibit 13. MRO argued that Act No. 2012-139 “clarified” the MRA consistent with the opinion of the Superior Court and, therefore, argued that Plaintiff’s appeal was moot. Exhibit 12.

39. Plaintiffs opposed MRO’s request by filing a Response To the Motion To Summarily Affirm. Exhibit 14. Plaintiffs asserted that MRO’s motion was based upon an erroneous premise: that Act No. 2012-139 constituted a retroactive clarification of a patient’s rights under §§ 6152(a)(1) and 6152(a)(2)(i) of the Medical Records Act. 42 P.S. §§ 6152(a)(1) and 6152(a)(2)(i). Exhibit 14. Plaintiffs, argued that, to the contrary, the amendment constitutes an extensive change to the substantive rights of patients’ rights under the MRA that operated prospectively only. Exhibit 14. Accordingly, as Plaintiff argued, Act No. 2012-139 did not provide the determination of the issues presented in the appeal.

40. On August 24, 2012, the Supreme Court denied the motion to summarily affirm or dismiss the appeal as improvidently granted. Ex. 15.

G. The Pennsylvania Supreme Court Decision

41. On February 22, 2012, the Pennsylvania Supreme Court accepted the case for review. *Wayne M. Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). In granting review, the Supreme Court framed the issues as follows:

(1) Does the Medical Records Act, 42 Pa.C.S. § 6152(a)(1) and (a)(2)(i), require medical records reproducers to disclose their estimated actual and reasonable expenses of reproducing the charts or records, and to limit their copying charges to these amounts or the statutory ceiling rates, whichever is less?

(2) If so, where a medical records reproducer failed to disclose and charge its estimated actual and reasonable expenses and instead charges the MRA's ceiling rates, do the "voluntary payment" and "prior approval" defenses bar the records requestor from bringing a subsequent breach of contract claim to recoup the unlawful overpayment?

614 Pa. 572, 39 A.3d 267.

42. On the merits of the appeal, in answering the first question presented, the Supreme Court rejected the Superior Court's interpretation of the 1998 MRA and embraced the Trial Court's:

In our view, the plain and unambiguous language of the Act—read in a way to avoid surplusage and to give effect to all provisions—fully supports the construction employed by the trial judge and the Superior Court dissent, and elaborated upon by appellants here. Having already summarized the competing views at length, we merely stress the following factors, evident in the language and structure of the MRA, that convince us *that this legislative scheme establishes that the expenses chargeable for medical records are the reproducer's actual and reasonable expenses, but subject to a statutory cap.*

626 Pa. at 335. (emphasis added). Ex. 16.

43. The Supreme Court noted that the 1998 MRA imposed two duties on records producers:

The first duty, in Section 6152(a)(1), is to disclose the estimated actual and reasonable expenses of reproducing the medical records to the requestor. The second duty, imposed by Section 6152(a)(2)(i), is to limit the charges to the

estimated actual and reasonable expenses or the statutory pricing schedule limit, whichever is less.

626 Pa. 303, 321, 97 A.3d 275, 285 (2014). Exhibit 16.

44. As to the second question on which the Supreme Court granted review, although fully briefed by the Parties and addressed by the Superior Court, the Supreme Court refused to reach the issues of “voluntary payment” and “prior approval”, leaving these “legal issues” to be resolved on remand. *Id.* at 338. Exhibit 17.

45. Thus, the Court reversed the Superior Court’s decision in the *Wayne M. Chiurazzi Law Inc. v. MRO Corp.* case. See *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 626 Pa. 303, 97 A.3d 275 (2014). Exhibit 16.

H. The Amended Complaints Substituting Plaintiffs and Defendant’s Corresponding Answer and New Matter

46. After remand, Plaintiff filed a First Amended Complaint on June 16, 2015 adding David Landay as the class representative. Exhibit 17.

47. On March 16, 2020, IOD filed its Answer and New Matter to the FAC. Exhibit 18. The IOD New Matter asserts certain affirmative defenses, including the following:

No. 7. Plaintiff’s claims are barred in whole or in part because IOD complied with any duty it had under the MRA by obtaining “prior approval” from the Plaintiff for the fees that it charged pursuant to § 6152(a)(2)(i).

No. 8. Plaintiff had knowledge (and/or means of knowledge) of all relevant facts, including facts relating to the fees, and he voluntarily paid them.

No. 9. Plaintiff's claims are barred by the voluntary payment doctrine.

No. 10 Plaintiff's claims are barred by the doctrine of accord and satisfaction.

No. 11 Plaintiff's claims are barred by the doctrines of estoppel, waiver, truth, consent, failure of consideration and res judicata.

No. 12 All equitable defenses, including, but not limited to, the defense of "unclean hands" are asserted.

Exhibit 18, at p. 13, New Matter.

I. The Parties' Motions For Judgment On The Pleadings

48. After the close of pleadings, on June 16, 2021 Plaintiffs filed a Motion To Strike Affirmative Defenses and For Judgment on the Pleadings seeking to have the court strike Defendant's affirmative defenses based upon voluntary payment and prior approval.

49. Soon thereafter, a number of attorneys from the law firm of Kirkland & Ellis filed motions for *pro hac vice* which were granted by the court.

50. Defendant thereafter filed its own Motion For Judgment on the Pleadings seeking to have the FAC dismissed based upon the defenses of voluntary payment and prior approval.

51. On August 6, 2021, the Court entered an order setting a briefing schedule on the competing motions.

52. Thereafter, the Parties submitted various briefs in support of their motions and in opposition.

53. On August 8, 2022, the Court (Ignelzi, J.) overruled each of the motions for judgement on the pleadings.

J. The Discovery Proceedings

54. On March 20, 2022, the Court (Ignelzi, J) entered a scheduling order setting deadlines for conducting discovery, expert discovery and class certification proceedings.

55. The Parties engaged in extensive discovery proceedings. Fact and Class discovery in this matter had opened on September 29, 2022. Plaintiff propounded discovery in November of 2023. Defendant HealthPort claimed it needed time to make searches for information. It took until December 1, 2023, for HealthPort to confirm it would no longer voluntarily amend its discovery responses, confirm it completed its search for information responsive to the discovery requests, or produce any more documents.

56. Additional discovery directed to HealthPort's existence and any entities it acquired or merged with then resulted in admissions by HealthPort that it merged with IOD Incorporated and changed names between December 31, 2015 and February 19, 2016. This raised plaintiff's concerns as the adequacy of the parties, the ability to enforce discovery against non-existent entities, and the efficacy of any later obtained judgment.

57. On January 17, 2024, plaintiff filed a motion to strike HealthPort's Answer for lack of a proper verification. The motion was set for hearing on February

28, 2024, at the same time a status conference hearing on the coordinated cases. Ciox Health LLC (Ciox) then began to become directly involved in this matter. Ciox filed a voluntary substitution as a party defendant on February 22, 2024, becoming a party to the litigation.

58. The Court thereafter heard Plaintiff's motions to compel further response to Interrogatories and Production Demands from Ciox in July and August of 2024 and granted such motions. Ciox's responses suggest to Plaintiffs that the further interrogatory and production responses made after the Court's Order were not full, complete, and accurate. Nonetheless, Plaintiff has refrained from further enforcement actions pending resolution of mediation.

K. The Mediation Proceedings

59. In September 2024, Ciox decided to change its defense counsel. Attorney Leland Schermer of the law firm of Marcus & Shapiro filed appearances on behalf of Ciox in both cases on September 25, 2024. Ciox previously employed teams of attorneys from two internationally known law firms. One of Ciox's prior counsel, K & L Gates withdrew all its attorneys as defense counsel on the same date that Mr. Schermer appeared. Thereafter, Ciox's other prior counsel, Kirkland & Ellis, LLP withdrew its attorneys as defense counsel on May 5, 2025.

60. After his appearance in the case, Mr. Schermer met and conferred with Plaintiffs' Counsel on moving the cases forward. Mr. Schermer proposed, and

Plaintiffs' Counsel agreed, to conduct mediation before (ret.) Magistrate Judge Lisa Pupo Lenihan. Accordingly, the Parties appeared before the Court on February 11, 2025 for a Status Conference and informed the Court of the Parties agreement to conduct mediation.

61. To proceed with the mediations, the Parties started with the *Landay v. Ciox (HealthPort)* case pending at GD-09—12922. This process was two-fold. *First*, Ciox produced a spreadsheet with hundreds of thousands of entries of potential class members in the *Ciox(HealthPort)* matter. The Parties then engaged in discussions to understand the data in the spreadsheet and identify those persons or entities identified on the spreadsheets who would have claims under the Pennsylvania Medical Records Act as asserted in the Second Amended Class Action Complaint. Once this initial process of identifying potential class members and the Parties identification of non-members and persons whose status as members or non-members was concluded, the Parties proceeded with a scheduled mediation with Judge Lenihan.

62. Mediation was conducted on the following dates: March 19, 2025; May 5, 2025 (mediation of class relief) and July 10, 2025 (mediation of attorneys' fees). Thus, the Parties reached a tentative agreement in *Ciox(HealthPort)* action by the end of July 2025.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed this 22st Day of June, 2026, in Pittsburgh, Pennsylvania.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon counsel of record by Electronic Mail this 8th Day of June 2026 addressed as follows:

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