

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

BARBARA EDWARDS, in her capacity as  
Trustee in Bankruptcy of Roxbury  
Surgical Center, LLC, f/d/b/a  
Roxbury Open MRI and Surgery  
Center, and NORTH JERSEY AMBULATORY  
SURGERY CENTER, LLC, *individually  
and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

HORIZON BLUE CROSS BLUE SHIELD  
OF NEW JERSEY,

Defendant.

CIVIL ACTION NO. 08-cv-6160 (KM)

CERTIFICATION OF NEIL PRUPIS IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR AN AWARD OF ATTORNEYS' FEES  
AND COSTS

I, NEIL PRUPIS, of full age, do hereby certify:

1. I am an attorney at law of the State of New Jersey and  
co-class counsel for plaintiff in the above matter. I submit this  
certification in support of Plaintiff's motion for an award of  
fees and costs in connection with the above referenced matter which  
is returnable at the final approval hearing presently scheduled  
for June 29, 2018.

2. My co-counsel, Bruce Nagel has submitted an extensive certification in support of Plaintiff's motion for an award of fees and costs and a class representative service fee. I will not repeat the issues addressed in Mr. Nagel's certification. Rather, I will address in this certification certain issues related to my role as class counsel and the billing and work performed at my prior firm, Lampf Lipkind Prupis & Petigrow.

3. Plaintiffs seek an Order that provides for Defendant, Horizon Blue Cross Blue Shield of New Jersey ("Horizon") to pay \$9,000,000.00 to Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses in accordance with ¶6 of the Settlement Agreement and a Class Representative Services Award in the amount of \$5,000 to the Class Representative pursuant to ¶4 of the Settlement Agreement. Significantly, neither the legal fees award nor class representative service awards reduce or impact the payments available to Class Members, as these payments are separate from the funds available to the Class.

4. Consistent with the Settlement Agreement, Horizon does not oppose the requests made by Plaintiffs in this motion and has agreed to pay them if the Court approves this application. (settlement agreement at ¶¶4 and 6).

5. Given the 13 plus years of work performed by Class Counsel, and the significant and favorable recovery obtained in this litigation, we submit that the fee award requested is

consistent with the fee awards in this District. This settlement and the relief obtained is fair, reasonable and adequate.

6. As part of the settlement, the Parties agreed that, subject to the Court's final approval, Class Counsel shall be entitled to seek an award of attorneys' fees and costs of up to \$9,000,000, an amount which is less than the loadstar in this 13 year litigation. (§6). Horizon agrees not to oppose this application. The amount awarded by the Court for attorneys' fees will not reduce the recovery to the Class Members.

EXPERIENCE OF CLASS COUNSEL<sup>1</sup>

7. I have been counsel to the Plaintiffs from the commencement of this litigation.<sup>2</sup> For most of the litigation, I was a partner at the firm of Lampf Lipkind Prupis & Petigrow.<sup>3</sup> I am one of the nation's leading health care attorneys and one of

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<sup>1</sup> The firm Resume of Neil Prupis is annexed hereto as Exh. A.

<sup>2</sup> With regard to the qualifications of Nagel Rice LLP and Neil Prupis, this Court's attention is directed to the following cases: Gregory Surgical Servs., LLC v. Horizon Blue Cross Blue Shield of NJ, Inc., 2007 U.S. Dist. LEXIS 94056 (D.N.J. Dec. 26, 2007) (Greenaway, J.); Wayne Surgical Ctr., LLC v. Concentra Preferred Sys., Inc., 2007 U.S. Dist. LEXIS 61137 (D.N.J. Aug. 20, 2007) (Ackerman, J.); Garcia v. Health Net of N.J., Inc., No. BER-C-37-06, 2007 N.J. Super. Unpub. LEXIS 2995 (Ch. Div. Nov. 20, 2007), aff'd, 2009 N.J. Super. Unpub. LEXIS 2858 (App. Div. Nov. 17, 2009); certif. denied, 201 N.J. 442 (2010).

<sup>3</sup> The Lampf Lipkind firm was acquired by Wilson Elser Moskowitz Edelman & Dicker LLP.

the few attorneys that specializes in ERISA. I am widely recognized as a leading expert in health care law and ERISA.

Request For Fees And Expenses Using Lodestar Analysis

8. We submit that an award in the amount of \$9 million is reasonable given the work performed and the results achieved. Class Counsel worked strenuously to achieve this settlement by conducting a thorough investigation, engaging in extensive discovery, and participating in adversarial litigation for over 13 years in a complex litigation. Moreover, the fees and costs (as well as the Class Representative Service Awards) will be paid separately from, and in addition to, the other benefits regarding this settlement. Hence, these requests should be approved.

9. Class Counsel in this case billed over 14,215.13 hours at a total lodestar of \$9,108,531. A chart of the time spent by the attorneys/paralegals at Lampf Lipkind and Nagel Rice and the hourly rates is attached hereto as Exhibit B. Class Counsel's total expenses are \$225,556.89. These expenses include, but are not limited to, the costs of expert expenses, Xerox and postage, travel expenses, legal research, mediation, messengers, as well as court fees.

10. The attorneys at Lampf Lipkind billed at a current billing rate for this complex matter taking into account the hourly rates routinely charged in complex class action litigation in this

district and region.<sup>4</sup> The partner rates at Lampf Lipkind were between \$650 and \$750 per hour depending on expertise and level of experience and associate rates were between \$425 and \$450 per hour. See Exhibit B. The partner rates at Nagel Rice were between \$550 and \$850 per hour depending on expertise and level of experience and associate rates were between \$350 and \$450 per hour. See Nagel Cert. at ¶35 and Exhibit B to the Nagel Cert.

11. A true and correct copy of the firm resume for Neil Prupis is annexed hereto as Exhibit A.

12. The requested fee amount (\$9 million) does not have any lodestar multiplier as the total amount of fees and expenses actually expended totals \$9,334,087.89.

Details Related to Expenses


13. In this case Class Counsel has incurred \$225,556.89 in expenses that were for the common benefit of Class Members. These expenses will be paid out of the \$9 million fee and expense request. These expenses include, but are not limited to, the costs of expert expenses, Xerox and postage, travel expenses, legal research, mediation, messengers, as well as court fees.

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<sup>4</sup> The attorneys at Lampf Lipkind who billed time on this matter are now all with other firms. Mr. Gentile is a partner at Wilson Elser Moskowitz Edelman & Dicker, LLP; Ms. Mack is a partner at Wilentz, Goldman & Spitzer; Jillian Romaniello is Associate General Counsel at University Hospital; and Divya Srivastav-Seth is an associate at Schenck Price Smith & King, LLP.

I certify that the foregoing statements made by me are true.  
I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 18<sup>th</sup>, 2018

By:   
Neil Prupis, Esq.

# **EXHIBIT**

# **"A"**

**NEIL L. PRUPIS, ESQ.**

47 Blackstone Drive  
Livingston, New Jersey 07039  
973-220-9704  
[nlprupis@gmail.com](mailto:nlprupis@gmail.com)

**ADMISSIONS:**

New Jersey Bar  
United States District Court, District of New Jersey  
U.S. Court of Appeals, Third and Fifth Circuits  
United States Tax Court

**EDUCATION:**

New York University School of Law, LL.M., 1974, Taxation  
Rutgers School of Law, J.D., 1971, *Rutgers Law Review*  
Rutgers University – Newark, B.A. 1968

Neil served as law secretary to the Honorable Theodore I. Botter, Judge, Superior Court of New Jersey. In law school, Neil was a member of the *Rutgers Law Review*, the flagship publication among the five accredited law journals at Rutgers School of Law. He has been an active member of the New Jersey Institute for Continuing Legal Education (NJICLE) for many years and is much in demand for his signature lectures on health care law and taxation. He is a frequent moderator for ICLE panel discussions.

**Health Care**

Neil provides a full range of corporate, transactional, litigation, tax and estate planning services to health care clients, including physicians, dentists, chiropractors, physical therapists, nurses and other professionals as well as group practices, home and residential health care services, durable medical equipment companies, practice management groups, ambulatory surgical centers and medical billing companies.

Neil also provides litigation and transactional services, such as physician employment agreements, health care litigation, hospital contracts, provider reimbursement and recovery, asset purchase agreements, shareholder agreements, provider appeals, employment and shareholder litigation, arbitrations, licensing, non-compete issues and operating agreements.

Neil has handled numerous cases that have defined important aspects of health care law and/or ERISA law. Such cases have included (without limitation):

- Garcia v. Health Net of N.J., Inc., No. A-2430-07T3 (N.J. App. Div.);
- Glen Ridge Surgicenter, LLC v. Horizon Blue Cross Blue Shield of N.J., Civ. A. No. 08-6160, (D.N.J.)
- Wayne Surgical Ctr., LLC v. Concentra Preferred Sys., Civ. A. No. 06-928 (D.N.J.)
- Wayne Surgical Ctr., LLC v. Concentra Preferred Sys., Civ. A. No. 06-928, 2008 (D.N.J.)
- Gregory Surgical Servs., LLC v. Horizon Blue Cross Blue Shield of N.J., Civ. A. No. 06-0426 (D.N.J.)
- Sutter v. Horizon Blue Cross Blue Shield of N.J., No. A-5725-09T1 (N.J. Superior Ct.)



- North Cypress Medical Center Operating Company, Ltd. et al. v. Aetna Life Insurance Company, Civ. A. No. 4:13-cv-359, U.S. Dist. Ct. Southern Dist. Texas
- Aetna Life Insurance Company v. Robert A. Behar, M.D., et al., Civ. A. No. 4:15-cv-491, U.S. District Court Southern Dist. Texas
- North Cypress Medical Center Operating Co., Ltd. et al. v. CIGNA Healthcare, et al., Civ. A. No. 4:09-cv-2556, U.S. Dist. Ct. Southern Dist. Texas

# **EXHIBIT**

# **"B"**

# **FEE SUMMARY FOR PLAINTIFFS' LAW FIRMS**

## **I. NAGEL RICE FEE SUMMARY (through May 18, 2018)**

<b>Attorney</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Bruce H. Nagel	925.3	\$850	\$786,505.00
Robert H. Solomon	2289.6	\$700	\$1,602,720.00
Randee Matloff	396.7	\$700	\$277,690.00
Wayne Greenstone	97.2	\$600	\$58,320.00
Barry Packin	1	\$600	\$600.00
Andrew O'Connor	23.1	\$550	\$12,705.00
Greg Kohn	18.7	\$550	\$10,285.00
Andrew Pepper	26.3	\$450	\$11,835.00
Mike Feldman	32.9	\$450	\$14,805.00
Moira Lopez	2.5	\$450	\$1,125.00
Stephanie Nielson	19.9	\$450	\$8,955.00
Steven Weisbrot	1.6	\$450	\$720.00
Jennifer Rios	3.1	\$450	\$1,395.00
Jacob Raddock	2	\$450	\$900.00
Shaun Blick	4.65	\$450	\$2,092.50
Michael Paragano	62.7	\$450	\$28,215.00
Marshall Dworkin	8.38	\$450	\$3,771.00
Paralegal	32.5	\$150	\$4,875.00
Philip Nostrand	1.6	\$150	\$240.00
Debbie Rible	35.7	\$150	\$5,355.00
Michael Kalmas	6.5	\$150	\$975.00
Matthew Fiorovanti	36.4	\$150	\$5,460.00
Zack Goldberg	8	\$150	\$1,200.00
Zack Goldman	22	\$350	\$7,700.00
<b>TOTALS</b>	<b>4058.33</b>		<b>\$2,848,443.50</b>

**TOTAL FEES = \$2,848,443.50**

**DISBURSEMENTS:**

Glen Ridge = \$30,437.93

Gregory = \$3,370.82

Wayne = \$19,869.75

**TOTAL DISBURSEMENTS = \$53,678.50**

**II. LAMPF LIPKIND FEE SUMMARY** (through Dec. 21, 2016)

Attorney	Hours	Hourly Rate	Total
Neil Prupis	1683.8	\$750	\$1,262,850.00
Divya Seth	1455.25	\$550	\$800,387.50
Thomas Gentile	3247.7	\$675	\$2,192,197.50
Grace Mack	1772.15	\$650	\$1,151,897.50
Jillian Romaniello	1758.4	\$425	\$747,320.00
Elyse Kremins	87.5	\$450	\$39,375.00
Bassel Bakhos	13.1	\$450	\$5,895.00
Theresa Borzelli	36.5	\$450	\$16,425.00
Matt Iftode	12.5	\$450	\$5,625.00
Craig Brosnick	70	\$450	\$31,500.00
Jennifer Barros	7.8	\$150	\$1,170.00
Mitchell Decter	10.8	\$450	\$4,860.00
Traci Zalinski	1.3	\$450	\$585.00
<b>TOTALS</b>	<b>10156.8</b>		<b>\$6,260,087.50</b>

**Total Fees = \$6,260,087.50**

**DISBURSEMENTS:**

Roxbury/Edwards - \$7,167.67  
 Gregory 1 - \$1,866.24  
 Gregory 2 - \$787.65  
 Wayne 24 - \$129,950.97  
 Wayne 59 - \$32,105.86

**TOTAL DISBURSEMENTS = \$171,878.39**

COMBINED TOTALS

Total Hours = 14,215.13

Total Fees Both Firms = \$9,108,531.00

Total Disb. Both Firms = \$225,556.89

Fees plus Expenses = \$9,334,087.89