**[Cite as *Assn. for Hosp. & Health Sys. v. Ohio Dept. of Human Serv.*, 2004-Ohio-3810.]**

**IN THE COURT OF CLAIMS OF OHIO**

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| OHA: THE ASSOCIATION FOR HOSPITALS AND HEALTH SYSTEMS, et al. | : | |
| | : | CASE NO. 99-01233 |
| | | Judge Fred J. Shoemaker |
| Plaintiffs | : | |
| | | DECISION |
| v. | : | |
| DEPARTMENT OF HUMAN SERVICES, et al. | : | |
| | : | |
| Defendants | | |

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**{¶1}** This matter came before the court for oral hearing on plaintiffs' motion for class certification. The parties also submitted stipulations of fact regarding the issues involved in class certification.[1]

**{¶2}** The issues presented for determination are: 1) whether plaintiffs have met their burden of demonstrating that a class should be certified in this case; and 2) whether two particular plaintiffs, The Association for Hospitals and Health Systems (OHA) and the Ohio State Medical Association (OSMA), have standing to sue as class representatives for their members.

**{¶3}** With respect to the first issue, plaintiffs have proposed the following class for certification:

**{¶4}** "Those physicians, hospitals, and medical providers who have provided medical services or goods to Medicaid recipients enrolled in a Medicaid managed care plan

[1]The stipulations include a caveat that: "all parties may challenge or contradict these stipulations for any other purpose."

operated by Personal Physician Care, Inc. (PPC) and who have not received payment for those goods or services."

**{¶5}** Briefly stated, this action concerns the operation of "OhioCare," an Ohio Medicaid program that required certain Medicaid eligible individuals to enroll in state-approved Managed Care Plans (MCPs). PPC was an OhioCare-approved MCP. As such, PPC entered into contracts with medical services providers for the provision of services to eligible Medicaid recipients. Under the OhioCare system, the state of Ohio paid the approved MCPs, such as PPC, a set amount per month for each of their Medicaid-eligible recipients; the MPC would then pay the medical services providers on a fee basis for services rendered to the Medicaid patients. In order to obtain federal approval, and to proceed with implementing the OhioCare system, the state was required to follow a number of terms and conditions imposed by the secretary of the Department of Health and Human Services. One of those conditions was that defendants, the Ohio Department of Human Services[2] (ODHS) and the Ohio Department of Insurance (ODI), monitor the financial condition of participating MCPs.

**{¶6}** At some point in late 1996, PPC became insolvent; it is currently involved in liquidation proceedings in the Franklin County Court of Common Pleas.[3] Plaintiffs are medical service providers who provided services to Medicaid recipients enrolled in PPC. In short, plaintiffs allege that defendants were negligent in performing their duties with respect to OhioCare, that they mishandled PPC's financial decline; and that they unconstitutionally took their property and the property of other class members without adequate compensation.

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[2]Now known as the Ohio Department of Job and Family Services.

[3]During the oral hearing on the class certification motion, this court held that the instant case would not be stayed pursuant to R.C. 2743.02(D) because the court is convinced that any collateral recovery in the liquidation proceedings will not fully reimburse plaintiffs for their alleged losses. However, the issues of liability and damages have been bifurcated and the court will not proceed with the damages portion of the trial, if it should subsequently become necessary, until the liquidation proceedings have ended.

**{¶7}** According to the parties' stipulations, approximately 1,200 hospital and medical services providers in Ohio have submitted claims in the common pleas court liquidation proceedings seeking reimbursement for hospital and medical services, or goods, that they claim they provided to Medicaid recipients enrolled with PPC. Plaintiffs claim that the proposed class identified in their second amended complaint consists of these same 1,200 hospital and medical services providers.

**{¶8}** The court recognizes at the outset that, "[a] trial judge has broad discretion in determining whether a class action may be maintained ***." *Marks v. C.P. Chem. Co., Inc.* (1987), 31 Ohio St.3d 200. However, it has consistently been held that the trial court's discretion is not without limits, rather, it is "bounded by and must be exercised within the framework of Civ.R. 23." *Hamilton, et. al. v. Ohio Savings Bank*, 82 Ohio St.3d 67, 70, 1998-Ohio-365. Moreover, "[t]he trial court is required to carefully apply the class action requirements and conduct a rigorous analysis into whether the prerequisites of Civ.R. 23 have been satisfied." Id. citing *Gen. Tel. Co. of the Southwest v. Falcon* (1982), 457 U.S. 147, 160-161; *Gulf Oil Co. v. Bernard* (1981), 452 U.S. 89, 100; *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (C.A.5, 1996); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (C.A.6, 1996). [All parallel citations omitted.]

**{¶9}** This court is required to make seven affirmative findings before plaintiffs' case may be certified as a class action. The first two of the findings are required by implication, the next five are specifically set forth in Civ.R. 23(A) and(B). *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91, paragraph one of the syllabus. The required findings are that: 1) an identifiable class exists and the definition of the class is unambiguous; 2) the named representatives are members of the class; 3) the class is so numerous that joinder of all members is impracticable; 4) there are questions of law or fact common to the class; 5) the claims or defenses of the representative parties are typical of the claims or defenses of the class; 6) the representative parties fairly and adequately protect the interests of the class;

and 7) one of the three Civ.R. 23(B) requirements must be met. See Civ.R. 23(A) and (B); *Warner* at 96-98.

**{¶10}** Upon consideration of the second amended complaint and its attachments, the arguments of counsel, and the stipulations of the parties, the court finds for the following reasons that plaintiffs have satisfied all of the implicit and explicit prerequisites required under Civ.R. 23(A), and that their action is maintainable under Civ.R. 23(B)(3). In reaching this determination, the court has read, inter alia, extensive case law. Of the cases considered, the court finds that *Hamilton*, supra; *Warner,* supra; *Cope, et. al. v. Metropolitan Life Ins.* (1998), 82 Ohio St.3d 426, 436; and *Ohio Academy of Nursing Homes v. Barry* (1987), 37 Ohio App.3d 46 were determinative.

**{¶11}** With respect to the seven required findings, the court must first find that an identifiable and unambiguous class exists. In order to satisfy this requirement, the proposed class must be "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." *Hamilton* at 71-72, citing 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure (2 Ed. 1986) 120-121, Section 1760. Here, both parties have records from the liquidation proceedings that identify at least the 1,200 proposed class members referred to in the stipulations. While there may ultimately be more, or less, than the 1,200 members referred to in the parties' stipulations, the court finds that any additional members can be readily identified from the records that have been relied upon thus far. Thus, the court finds that an identifiable and unambiguous class exists.

**{¶12}** The second requirement for class certification concerns whether the named representatives are members of the class. In order to satisfy this requirement it is necessary only that a representative have proper standing. *Hamilton* at 74. At this juncture, the parties' second issue arises, i.e., whether OHA and OSMA, have standing to sue on behalf of their members. The court has no doubt that the three other plaintiffs, Meridia Health System, Central Ohio Newborn Medical Inc., and Emergency Medicine

Physicians of Barberton Ltd., have standing to sue as class representatives. Moreover, there was no serious argument on that issue at the oral hearing. Rather, the critical inquiry here is whether the same may be said of OHA and OSMA.

**{¶13}** Standing to sue as a class representative requires that the plaintiff "possess the same interest and suffer the same injury shared by all members of the class that he or she seeks to represent." Id. citing 5 Moore's Federal Practice (3 Ed.1997) 23-57, Section 23.21[1]. (Additional citations omitted.)

**{¶14}** According to the parties' stipulations, OHA is "a non-profit professional association composed of most of the hospitals in the State of Ohio. OHA represents more than 180 hospitals and 40 health systems throughout Ohio. OHA works on behalf of members through leadership in the development of public policy, representation and advocacy of membership interests, and the provision of services which assist members in meeting the health care needs and improving the health status of the communities they serve."

**{¶15}** The stipulations define OSMA as "an Ohio non-profit professional association of approximately 20,000 private physicians, medical residents and medical students in the State of Ohio. *** OSMA's purposes are to improve public health through education, to encourage the interchange of ideas among members, to maintain and to advance the standards of medical practice by requiring its members to adhere to fundamental concepts of professional ethics, and to represent the positions of its members before courts, government bodies and agencies."

**{¶16}** Defendants argue that these two proposed class representatives lack standing because they do not possess the same interest or claim to have suffered the same injury as all the other members of the class they seek to represent. This court disagrees. Pursuant to the holding in *Ohio Academy of Nursing Homes*, supra, at paragraph 1 of the syllabus, "[a]n association has standing to bring suit on behalf of its members, whether the association is incorporated or unincorporated, when: (1) its members would otherwise have

standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." In this case, the court finds that OHA and OSMA meet all three of those requirements. The association members clearly have standing to sue in their own right and their individual participation is not required, particularly not in the liability portion of the trial. The court is also convinced that the interests that OHA and OSMA seek to protect are germane to the purposes set forth in the above-quoted stipulations. Indeed, one of the explicit purposes of OHA is to provide "representation and advocacy of membership interests." Similarly, one of OSMA's explicit purposes is to "represent the positions of its members before courts ***." At some point in the future it may be necessary to amend the class to sever these two parties into individual sub-classes; however, that question can be addressed at a later date.

**{¶17}** Returning to the seven required affirmative findings, the court must next consider the first explicit requirement set forth under Civ.R. 23(A), the numerosity requirement. The decision concerns both the actual number of proposed members and the practicability of their individual joinder. Having found that a identifiable and unambiguous class exists, and that it consists of at least 1,200 members who have also submitted claims in the liquidation proceedings, the court finds that this requirement has been met. Moreover, despite defendants' arguments to the contrary, the court is not convinced that joinder of 1,200 plaintiffs would be more practicable than a class action form of proceeding.

**{¶18}** As stated in *Hamilton*, "'[j]oinder is more likely to be impracticable if the class members can be assumed to lack the ability or the motivation to institute individual actions. For example, if [a] class member's individual claims involve only a small amount of damages, class members would be unlikely to file separate actions. ***.'" Id. at 75 citing 5 Moore's Federal Practice (3 Ed.1997) 23-71, Section 23.22[5]. In this case, the parties' stipulations state that "the proofs of claim submitted by proposed Class members in the

PPC Liquidation range in amount from claims as small as under $100.00 to claims of several million dollars." In short, the court finds that this requirement is easily satisfied.

**{¶19}**The court must next examine the commonality requirement of Civ.R. 23(A)(2). In order to make this finding, the court must determine whether there exists a "common nucleus of operative facts" or "generally common legal and factual questions." *Hamilton* at 77. In this case, the acts and/or omissions alleged in plaintiffs' second amended complaint all relate to defendants' operation of OhioCare and the general contention that they mishandled PPC's financial decline. As stated previously, allegations of plaintiffs' complaint essentially raise two core questions: 1) whether defendants' acts or omissions were negligent; and 2) whether defendants' conduct constitutes an unconstitutional taking. Although every question of law or fact may not be common to all parties, that is not the standard that must be met. Id. Thus, the court finds that plaintiffs have satisfied this requirement.

**{¶20}**The next required finding concerns the typicality of claims and defenses as set forth under Civ.R. 23(A)(3). In order to satisfy this requirement, it is not necessary that the representatives' claims be identical to those of every single class member; it is sufficient to show that there is "no express conflict between the class representative and the class." *Hamilton* at 77. The court is convinced that no such conflict exists herein but, rather, that the claims of the representatives are typical of the claims of the class. Further, the court is not persuaded by defendants' arguments concerning defenses that are unique to particular plaintiffs. Defendants in *Hamilton* also advanced that argument and it was found to be without merit. The court held that "a unique defense will not destroy typicality *** unless it is 'so central to the litigation that it threatens to preoccupy the class representative to the detriment of the other class members.'" Id. at 78 citing 5 Moore's Federal Practice (3 Ed.1997) 23-126, Section 23.25[4][b][iv], and at 23-98, Section 23.24[6]. As in that case, the court here finds that none of the asserted defenses rise to the level necessary to defeat typicality, particularly for the liability portion of the trial.

**{¶21}**The next required finding concerns the adequacy of representation as set forth under Civ.R. 23(A)(4). This is a two-fold inquiry concerning both the adequacy of the class representatives to protect the interests of the class, and the competency of plaintiffs' counsel to represent them in the class action. *Warner v. Waste Management Inc.*, supra; *Hamilton* at 78-79. A class member is an adequate representative as long as its interest is not antagonistic to the other class members. *Hamilton* at 77-78. As stated previously, all of plaintiffs' allegations relate to defendants' operation of OhioCare and the handling of PPC's financial decline. There are essentially two claims asserted in the second amended complaint: negligence and unconstitutional taking of property. The court is persuaded that each class representative and class member has the same interests. With respect to the adequacy of counsel, the court finds that the parties' stipulations, numbered 29 through 32, contain sufficient information to satisfy any question regarding that issue. Furthermore, based upon personal knowledge, the court finds that plaintiffs' counsel are, without question, fit for the task. Therefore, the court finds that plaintiffs have satisfied the Civ.R. 23(A)(4)requirement.

**{¶22}** Finally, with respect to the requirements of Civ.R. 23(B), the court finds that plaintiffs' action can be maintained pursuant to 23(B)(3). That section provides, in pertinent part, that "[a]n action may be maintained as a class action if, *** the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action."

**{¶23}** As noted in *Hamilton*, "'The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.'" Id. at 80 citing *Amchem Prods., Inc. v. Windsor* (1997), 521 U.S. 591. (Additional citations omitted.)

**{¶24}** As stated previously, this case involves claims ranging from $100 up to millions of dollars. The court finds that it is evident that questions of law or fact common to the members of the class predominate and, upon consideration of the four factors set forth under Civ.R. 23(B)(3), that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The court is convinced that plaintiffs are correct in their assertion that the common questions of law and fact regarding the claims of negligence and unconstitutional taking of property can be resolved with "one body of evidence, that regarding [defendants'] conduct toward PPC." Moreover, as with the discussion of typicality, the defenses asserted to be unique to particular plaintiffs do not defeat predominance at this stage of the court's inquiry. In *Hamilton*, the court spoke at length on this question and concluded that individualized inquiries into damages, inducement, reliance and the statute of limitations do not, alone, preclude certification. Id. at 81-86. In sum, the court concludes, as did the court in *Hamilton*, that "[t]his appears to present the classic case for treatment as a class action, and cases involving similar claims or similar circumstances are routinely certified as such." Id. at 80. (Additional citations omitted.)

**{¶25}** For all of the foregoing reasons, the court finds that plaintiffs have met their burden of proof and their motion for class certification shall be GRANTED. As stated previously, any questions regarding division of the proposed class into sub-classes shall be addressed at future conferences which will be scheduled in the normal course.

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| Plaintiffs | : | JUDGMENT ENTRY |
| v. | : | |
| DEPARTMENT OF HUMAN SERVICES, et al. | : | |
| Defendants | : | |

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An oral hearing was conducted in this case upon plaintiffs' motion for class certification. For the reasons set forth in the decision filed concurrently herewith, plaintiffs' motion is GRANTED. This case shall proceed as a class action with the certified class being: Those physicians, hospitals, and medical providers who have provided medical services or goods to Medicaid recipients enrolled in a Medicaid managed care plan operated by Personal Physician Care, Inc. and who have not received payment for those goods or services.

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FRED J. SHOEMAKER
Judge

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