

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STEVEN A. ARMATAS, INDIVIDUALLY, and
as PERSONAL MEDICARE REPRESENTATIVE
FOR ALEXANDER E. ARMATAS, and as
EXECUTOR OF THE ESTATE OF
ALEXANDER E. ARMATAS, deceased,

c/o Steven A. Armatas, Esq.
7690 Bucknell Circle N.W.
North Canton, Ohio 44720

PLAINTIFFS,

vs.

PULMONARY PHYSICIANS, INC. OF
CANTON, OHIO

c/o Statutory Agent
JEFFREY B. MILLER, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

-and-

AULTCARE INSURANCE CO.
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710

- and-

AULTMAN HOSPITAL
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710,

DEFENDANTS

Case No:

Judge

ACTION FOR DECLARATORY
JUDGMENT

COMPLAINT AND CAUSES OF
ACTION

REQUEST FOR INJUNCTIVE
RELIEF

REQUEST FOR DISPENSING OF
BOND

REQUEST FOR HEARING

NOW COME PLAINTIFFS, Steven A. Armatas, Individually, and as Personal Medicare Representative for Alexander E. Armatas, and as Executor of the Estate of Alexander E. Armatas (together, “Plaintiff,” for ease of reference), in order to seek a Declaratory Judgment interpreting certain provisions of federal law that Plaintiff and Defendants Pulmonary Physicians, Inc. of Canton, Ohio (“PPI”) and Aultman Hospital (“Aultman”) and AultCare Insurance Co. (“AultCare”), disagree upon. Aultman and AultCare are sometimes referred to hereinafter together as the “Aultman Defendants.”

PROCEDURAL BACKGROUND

1. On December 28, 2016, Plaintiff filed his original Complaint with the Stark County Court of Common Pleas in Canton, Ohio alleging medical negligence and wrongful death, along with several other federal and state law causes of action, against PPI and the Aultman Defendants and several of their affiliated entities and physicians in connection with death of Plaintiff’s father, Alexander E. Armatas, which occurred on December 31, 2014, while Alexander was a patient in the Surgical ICU of Aultman. The matter was assigned Case No. 2016-CV-02801 and was presided over by Judge John G. Haas. In accordance with Ohio Civ. R. 10(D)(2), an Affidavit of Merit signed by a qualified physician was submitted as part of Plaintiff’s original complaint.

2. Pursuant to Ohio Civ. R. 15(A), on or about January 25, 2017, Plaintiff filed his First Amended and Restated Complaint as a matter of right and without seeking leave of court because such Amended and Restated Complaint was filed within 28 days of Plaintiff’s original Complaint.

3. On February 20, 2018, pursuant to Ohio Civ. R. 41(A)(1)(a), and because of various irregularities being promulgated by the Aultman Defendants in the litigation, including at

one point engaging in *ex parte* contacts with Judge Haas' legal counsel, Plaintiff filed a Notice of Voluntary Dismissal of his Stark County Court of Common Pleas lawsuit, in order to remove the action from state court and re-file it in federal court.

4. On February 15, 2019, pursuant to the rights afforded him under R.C. 2305.19, Plaintiff re-filed and re-commenced his lawsuit in the United States Federal District Court for the Northern District of Ohio against PPI, the Aultman Defendants and 11 other related persons or entities.¹ The matter was assigned Case No. 5:19-cv-00349 and was presided over by Magistrate Judge Kathleen B. Burke and Judge John R. Adams (the "Federal Court Litigation").

5. On March 31, 2020, Judge John R. Adams dismissed Plaintiff's federal causes of action without designation, declined to exercise supplemental jurisdiction over any of Plaintiff's state law claims, and thus dismissed all the state law causes of action **WITHOUT PREJUDICE**. A copy of Judge Adams' order and Judgment Entry is attached hereto as **Exhibit #1**.

6. In accordance with 28 U.S.C § 1367(d), on April 30, 2020, Plaintiff re-filed his dismissed state law claims and several new federal causes of action against the Aultman Defendants and essentially the same group of remaining defendants as appeared in the original state court action before Judge Haas and the Federal Court Litigation before Judge Adams. The most recent matter was filed in the Stark County Court of Common Pleas and assigned Case No.

¹The 1 Defendants in addition to PPI and the two Aultman Defendants were Aultman Health Foundation, the parent entity of Aultman and Aultcare ("AHF"); Nihad Boutros, M.D., Eyad Nashawati, M.D., Matthew Knoch, M.D., Jeffrey Miller, M.D., Chadi E. Bouserhal, M.D. (collectively, the "ICU Defendants"); M. Richard Stjernholm, D.O. and Ohio Physicians Professional Corporation dba Surgical Associates of Canton of OPPC (collectively, the "Stjernholm Defendants"); and Mark N. Rose, Gregory Haban, M.D., and Timothy Regula (collectively, the "Rose Defendants").

2020 CV 00741. It is currently being presided over by Visiting Judge Michael E. Jackson (the “Underlying Litigation”).

THE PARTIES

7. Plaintiff incorporates paragraphs 1 through 6 above as if fully re-alleged and re-written herein.

8. Plaintiff, Steven A. Armatas (hereinafter, sometimes, “Steven” or “Mr. Armatas”) is an individual who resides in Plain Township, Ohio. Plaintiff is the adult son and only child of Alexander E. Armatas; the duly designated “Personal Representative” (pursuant to federal Medicare regulations) for Alexander E. Armatas; and Executor of the Estate of Plaintiff’s decedent, Alexander E. Armatas (hereinafter, sometimes, “Alexander”), as duly appointed by the Stark County Probate Court on December 15, 2016, in Case No. 227735.

9. At all relevant times herein, Defendant Aultman is and was a non-profit corporation duly licensed and registered under the laws of the State of Ohio. The medical care Defendant Aultman provided to decedent, which is at issue in the Underlying Litigation, was rendered while Alexander was hospitalized at Aultman from October 11, 2014 through the date of his death on December 31, 2014.

10. At all relevant times herein, Defendant AultCare, is and was an insurance company duly licensed and registered under the laws of the State of Ohio and the sponsor and operator of PrimeTime Health Care Plan-Timken Company, a Federal Medicare Advantage Plan (the “AultCare MAP”), Alexander’s sole health insurance provider.

11. At all relevant times herein, Defendant PPI is and was a corporation duly licensed and registered under the laws of the State of Ohio. PPI held itself out to the public, including Plaintiff and his decedent, as being sufficiently staffed and equipped with physicians and other

personnel who were competent and able to provide intensivist, pulmonary, and related medical care within the acceptable standards of practice. PPI is the entity which employed the ICU Defendants and/or of which the ICU Defendants were principals or owners.

JURISDICTION AND VENUE

12. Plaintiff incorporates paragraphs 1 through 11 above as if fully re-alleged and re-written herein.

13. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and 28 U.S.C. §1332.

14. Jurisdiction is also appropriate in accordance with the U.S. Supreme Court's decision in *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013) wherein the Court held that federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter. *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U. S. 350, 373 (1989) (NOPSI) (“[T]here is no doctrine that . . . pendency of state judicial proceedings excludes the federal courts.”).

15. The U.S. District Court for the Northern District of Ohio has personal jurisdiction over PPI and the Aultman Defendants because said Defendants have offices in the Northern District of Ohio, do business in the Northern District of Ohio, and the acts complained of have given rise to disagreements between the parties over the proper interpretation of applicable federal law.

16. Venue is proper pursuant to 28 U.S.C. § 1391(b) because PPI and the Aultman Defendants conduct substantial business within the Northern District of Ohio, and the acts

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