

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

DAVID M. ELSEA and JEANNE
MORGAN, Individually and as Class
Representatives,

Plaintiffs,

v.

U.S. ENGINEERING COMPANY and
JACKSON COUNTY, MISSOURI,

Defendants.

Case No. 1016-CV15976

Division No. 60

JOINT MOTION TO MODIFY SETTLEMENT

Plaintiffs David Elsea and Jeanne Morgan, on behalf of themselves and the class they represent, and Defendant U.S. Engineering Co., jointly pray that the Court approve a modification of the settlement agreement to provide for a different provider of the medical monitoring services required by the settlement. As grounds for this relief, the parties state:

1. The original settlement agreement contemplated that the University of Kansas Medical Center in Kansas City, Kansas (“Medical Center”), would provide the medical monitoring services. At the time of the settlement, U.S. Engineering had not entered into a contract with the Medical Center concerning those services.

2. After the Court approved the settlement, U.S. Engineering unsuccessfully attempted to negotiate a contract with the Medical Center. The Medical Center’s financial demands were unacceptable to U.S. Engineering. Thus, no contract with the Medical Center was ever agreed to.

3. Thereafter, U.S. Engineering identified an alternate provider and it is prepared to enter into a contract with Apex Care Solutions to provide the required medical monitoring services. Apex is based in Overland Park, Kansas, but it has arranged for 17 locations throughout the Kansas City metropolitan area to provide the medical monitoring services. Apex will coordinate with Encompass Medical Group, Diagnostic Imaging Center, Liberty Hospital, & Olathe Health to provide the required monitoring. Apex is fully capable of supplying all required medical monitoring services throughout the 30-year period covered by the settlement.

4. The proposed modification in no way adversely affects the class. To the contrary, since the Medical Center had only one location, the use of Apex will materially improve class members' access to medical monitoring. Additionally, the more cost-effective medical provider will allow for additional funds to be available to the class for monitoring in the years to come.

5. Because of the impasse with the Medical Center, the class has not yet been notified of the provider of the medical monitoring services. Should the Court approve the modification, the best practicable notice will be sent to the class and medical monitoring can proceed promptly.

6. The parties are unsure whether such an immaterial modification to the settlement agreement requires Court approval. To be on the safe side, they are requesting approval.

7. Because Jackson County has no financial responsibilities under the settlement agreement, it is unnecessary for it to join in this motion. Jackson County has been advised of the motion and has no objection to it.

Wherefore, the parties jointly pray that the Court modify the settlement agreement to provide for a different provider of the medical monitoring services required by the settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2018, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the court's electronic filing system upon the following:

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