

BRANDI HOWARD, ET AL

NUMBER: 455,488-A

VERSUS

FIRST JUDICIAL DISTRICT COURT

WILLIS-KNIGHTON MEDICAL  
CENTER

CADDO PARISH, LOUISIANA

**SETTLEMENT AGREEMENT**

Representative plaintiffs on behalf of the Certified Classes, by and through their counsel, and Willis-Knighton Medical Center ("Willis-Knighton") hereby enter into this Settlement Agreement, providing for settlement of claims herein described against Willis-Knighton, pursuant to the terms and conditions set forth below, and subject to the approval of the court.

Plaintiffs filed a class action against Willis-Knighton alleging that Willis-Knighton charged class members for medical expenses incurred at Willis-Knighton by filing liens against tortfeasors and/or third-party liability insurers when Willis-Knighton allegedly should have charged the Class Members' health insurers for those medical expenses;

This litigation relates only to patients with private insurance who were treated in the emergency room for injuries sustained in accidents caused by the fault of a third party between the years 1999 and 2003. This case was not related to quality of care. It is simply about who should pay for the care the patients received;

Plaintiffs have asserted that Willis-Knighton violated its Provider Agreements with the various health insurers and Louisiana law by charging class members for medical expenses incurred at Willis-Knighton by filing liens against tortfeasors and/or third-party liability insurers and by failing to charge medical expenses to the Plaintiffs' health insurers;

Willis-Knighton maintains that it followed common hospital billing and charging practices and that sought to recover from the proper payor. Willis-Knighton has vigorously denied and continues to vigorously deny all of these claims that it acted in any way that was contrary to the rules and regulations regarding billing and any and all allegations of wrongdoing, fault, liability or damage of any kind to Plaintiffs and the Certified Classes. However, the defense of this case resulted in Willis-Knighton having to devote significant resources to defend its position. Consequently, to avoid additional the time and expense necessary to continue this lawsuit Willis-Knighton has agreed to resolve this case:

Furthermore, Willis-Knighton has asserted its right to set-off any amount allegedly due from Willis-Knighton to any Class Member against claims Willis-Knighton has against that class members for medical treatment unrelated to the amounts at issue in this litigation;

The Parties to this Settlement Agreement have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the complaints filed in this Action and the claims set forth therein and have litigated the matter for over ten (10) years, have conducted extensive discovery, have each hired and consulted with numerous experts, have argued and briefed numerous motions including the class certification motion, have filed writ applications with higher courts, and have appealed the certification of the classes;

Willis-Knighton, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless has agreed to enter into this Settlement Agreement to avoid further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the claims that have been asserted or could have been asserted in the Action;

Plaintiffs and Class Counsel recognize the costs and risks of continuing to prosecute this litigation and believe that it is in the interest of all members of the Certified Classes to resolve finally and completely the pending claims of the Plaintiffs and the Certified Classes against Willis-Knighton;

As arm's-length, adversarial settlement negotiations have taken place between Class Counsel and Willis-Knighton over an extended period with the help and guidance of a mediator and as a result, this Settlement Agreement has been reached, subject to Court approval; and

Class Representatives and Class Counsel believe that this Settlement Agreement offers significant benefits to the Certified Classes and is fair, reasonable, adequate and in the best interest of all members of the Certified Classes.

NOW, THEREFORE, the undersigned Parties stipulate and agree that all claims of the Plaintiffs and Certified Class Members (as defined *infra* at paragraph I.D, I.E, and I.Z) against Willis-Knighton (defined below as "Settled Claims") shall be finally settled, discharged and resolved on the terms and conditions set forth below.

## I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the defined meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Action means the above-captioned lawsuit brought as *Howard v. Willis-Knighton Medical Center*, Number 455,488-A, in the First Judicial District Court of Caddo Parish, Louisiana.

B. "Attorneys' Fees and Expenses" means the amounts approved by the Court for payment to Class Counsel (as defined *infra* at Paragraph I.H), including attorneys' fees, costs, litigation expenses, fees and expenses of experts, as well as any interest earned on monies allocable to such attorneys' fees, costs and expenses.

C. "Certification Order" means the Court's certification order of May 16, 2005, and includes any findings of facts, related orders or opinions that further define or modify the Certified Classes.

D. "Certified Classes" means Subclass 3 and Subclass 4 as defined below that are materially the same as the Certification Order (see subparagraphs I.FF and I.GG, *infra*).

E. "Certified Class Members" means all persons who are members of the Certified Class except those persons who timely and validly requested exclusion from the Class Settlement (i.e. "opted out") after receiving notice in accordance with the Certification Order.

F. "Charge Master" means the predetermined listing of all amounts the hospital charges its patients for services and medical supplies.

G. "Claims Administrator" means the qualified third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer the Settlement, including implementing the Notice. The Parties agree to recommend that the Court appoint Rust Consulting, Inc., P.O. Box 2572, Faribault MN 55021-9572, Phone: (612) 359-2000 as Claims Administrator.

H. "Class Counsel" and/or "Counsel for Plaintiffs" means J. Patrick Hennessy, Law Office of J. Patrick Hennessy, Post Office Box 91, Shreveport, Louisiana 71161; Alan Stegall,

Welch, Simon, Fitzgerald, Cooke, Reed & Welch, 4700 Line Avenue, Suite 200, Shreveport, Louisiana 71106.

- I. "Class Members" includes all members of both Subclass 3 and Subclass 4.
- J. "Class Period" means January 1, 1999 through the date of Class Certification, as identified in the Court's Opinion of April 6, 2005, and Certification Order.
- K. "Class Representatives" means Bessie Tyler and Donna Atkins, as certified by the Court in the Certification Order.
- L. "Court" means First Judicial District Court, Caddo Parish, Louisiana.
- M. "Defense Counsel" means the law firm of Pugh, Pugh & Pugh, L.L.P., Lamar P. Pugh, P.O. Box 1711, Shreveport, LA 71166;; Health One, James F. Beatty, Jr., 385A Highland Colony Pkwy. Suite 100, Jackson Mississippi 39236; and Fulbright & Jaworski L.L.P., R. Jeffrey Layne and Lesley Reynolds, 98 San Jacinto, Suite 1100, Austin, Texas 78701.
- N. "Effective Date" means the date three business days after the date on which the Settlement and Final Order have become "Final" in that all of the following conditions have been satisfied: (1) the Final Judgment approving the settlement in its entirety has been entered, dismissing with prejudice the action against Willis-Knighton; and (2)(a) if an appeal is not sought from the Final Judgment, the expiration of the time for the filing of any appeal; (2)(b) if an appeal is sought from the Final Judgment, the date on which approval of this Agreement and the Final Judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.
- O. "Fairness Hearing" means the final hearing scheduled by the Court, after proper notice, to determine whether to approve this Settlement Agreement.
- P. "Individual Plaintiffs" means Tana Ashcraft and Brandi Howard, as represented by Patrick Hennessey, Alan Stegall, and Keith Welch, and Songkane Simmaly, appearing here *pro se*.
- Q. "Final Judgment" means the judgment approving this settlement that is materially the same as the document attached as Exhibit C, which is incorporated by reference.

R. "Lien Claim" means the claim and supporting allegations made by Plaintiffs that during the Class Period, Willis-Knighton violated Louisiana law by charging class members for medical expenses incurred at Willis-Knighton by filing liens against tortfeasors and/or third-party liability insurers and by failing to charge medical expenses to the plaintiffs health insurers.

S. "Neutral Evaluator" means a neutral third party approved by the Court as provided in paragraph II.C.6 below to serve as a binding arbiter(s) of any disagreements that might arise concerning the status of any person as a Class Member and/or the amount, if any, due to a Class Member under the terms of the Settlement Agreement, as provided for in paragraph IV.D.

T. "Non-certified Classes" includes proposed Subclasses 1 and 2 that were denied certification by the Court, as affirmed by the appellate courts. The members of the Non-certified Classes are not participants in this Settlement Agreement and are not entitled to assert any rights, debts, or claims through or under this Settlement Agreement. Nor are their rights or claims affected in any way by this Settlement Agreement except insofar as their uncertified claims will be dismissed without prejudice from the Action.

U. "Notice" means the Court-approved form of notice of this Settlement Agreement to the Certified Classes, substantially in the form of Exhibit A attached and incorporated by reference.

V. "Notice and Claims Administration Expenses" means all reasonable costs and expenses incurred in connection with preparing, printing, mailing and publishing the Notice, processing claims, paying claims and administering the Settlement.

W. "Notice Plan" means the program, described in part IV.C below, for disseminating Notice to the Settlement Class.

X. "Outstanding Debt" means any debts owed to Willis-Knighton by the Class Members, including both those debts subject to the Lien Claim that is the subject of this Action and any debts unrelated to the Lien Claim. This term includes not only debts owed personally to Willis-Knighton by Class Members but also any debts owed by others for whom a Class Member is a guarantor.

Z. "Plaintiffs" means the Class Representatives and all members of the Certified Classes.

AA. "Preliminary Approval Order" means the order of the Court granting preliminary approval of this Settlement Agreement authorizing the Notice and setting a date for the Fairness Hearing that is materially the same as the document attached as Exhibit B, which is incorporated by reference.

BB. "Released Claims" means and includes any and all known and Unknown Claims (as defined in paragraph I.JJ), rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* (arising under contract) or *ex delicto* (arising under alleged wrongdoing), debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses (including actual, consequential, statutory and/or punitive or exemplary damages or penalties) arising from or in any way related to any acts that have been alleged or that could have been alleged in this Action by the Class Representatives, the Settlement Class, and/or any Class Member, whether at law, in equity, or under any statute or regulation arising from or in any way related to any conduct of Willis-Knighton related to the debt(s) of any Class Member occurring during the Class Period that are the subject of the Lien Claim; provided however, that the Released Claims do not include any claim for enforcement of this Settlement Agreement and/or the Final Judgment.

CC. "Released Parties" or "Released Party" means Willis-Knighton and its related parties, including all subsidiaries.

DD. "Settlement Credit" means that net amount of credit applicable to members of Subclass 4 as identified and further defined in Paragraph III.B.2. below.

EE. "Settlement Payment" means a payment by Willis-Knighton through the Claims Administrator to a Class Member who is eligible to receive a cash payment under the terms of part III.B below.

FF. "Subclass 3" is defined in the Class Certification Order to mean all those persons who were covered by Health Insurance, but who on or after January 1, 1999, through the date of class certification nonetheless paid the full charges as reflected in Willis-Knighton's Charge

amount authorized by that Class Member's Health Insurer. The Health Insurers for the persons in this Subclass were not billed by Willis-Knighton for the medical services provided to those persons in this Subclass.

GG. "Subclass 4" is defined in the Class Certification Order to mean all those persons who were covered by Health Insurance from whom Willis-Knighton has demanded on or after January 1, 1999, through the date of class certification full payment in accordance with Willis-Knighton's Charge Masters for medical services provided by Willis-Knighton or has demanded more than the reimbursement amount authorized by that Class Member's Health Insurer but have not paid the charges. The Health Insurers for the persons in this Subclass were not billed by Willis-Knighton for the medical services provided to those persons in this Subclass.

HH. "Settlement Agreement" means this Settlement Agreement and the exhibits attached and incorporated into the Settlement Agreement for reference.

II. "Settling Parties" includes all Certified Class Members and Willis-Knighton and their related parties.

JJ. "Unknown Claims" means any claim arising out of newly discovered facts and/or facts found after the execution of this Settlement Agreement to be other than or different from the facts now believed to be true. The Released Claims defined in paragraph I.BB above, include all Unknown Claims arising from or in any way related to any acts that have been alleged or that could have been alleged in the Action by the Class Representatives, by the Certified Classes, and/or by any Class Member arising from or in any way related to any conduct of Willis-Knighton relating to the debt(s) of any Class Member occurring during the Class Period that are the subject of the Lien Claim. Upon the final approval of the Final Settlement, each Class Member shall be deemed to have expressly waived and released any and all Unknown Claims that he or she has or might have arising from or in any way related to any acts that have been alleged or that could have been alleged in the Action by the Class Representatives, by the Certified Classes, and/or by any Class Member arising out of or relating to any conduct of Willis-Knighton relating to the debt(s) of any Class Member occurring during the Class Period.

KK. "Willis-Knighton" means Defendant Willis-Knighton Medical Center together with its subsidiaries and all hospitals owned and/or operated by Willis-Knighton and/or its subsidiaries.

## **II. REQUIRED EVENTS**

Promptly after the execution of this Settlement Agreement by all of the undersigned:

A. Class Counsel and Willis-Knighton shall notify the Court that Plaintiffs and Willis-Knighton have reached a settlement.

B. Class Counsel and Willis-Knighton shall take all necessary steps to obtain approval of the Settlement Agreement and, having done so, shall take all necessary steps consistent with this Settlement Agreement to obtain judicial approval of the Class Settlement and the Dismissal with prejudice of the above captioned proceeding.

C. Class Counsel, on behalf of the Parties to this Settlement Agreement, and Willis-Knighton shall submit the Settlement Agreement to the Court for Preliminary Approval, and the Parties shall jointly move this Court to:

1. Preliminarily approve the terms of this Settlement Agreement as sufficiently fair and reasonable to warrant sending notice to the Settlement Class preliminarily certified for settlement purposes;
2. Determine or approve the Notice to be given to the Certified Classes advising them of the Settlement and of the Fairness Hearing and finding that the Notice Plan: is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise Class Members of the pendency of the Action and of their right to object to the Proposed Settlement; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of Louisiana law and requirements of due process under the Louisiana and United States Constitutions;
3. Rule that any Class Member who did not submit a timely, written request for exclusion in accordance with the Certification Order and notice



provided under it will be bound by all proceedings, orders and judgments in the Action; and

4. Require that each Class Member who has objections to the Proposed Settlement file an objection with the Court with service on Class Counsel and Defense Counsel postmarked not more than twenty-one (21) days after notice is mailed;
5. Approve the Claims Administrator;
6. Appoint a Neutral Evaluator to serve as arbiter of any disagreements that may arise in the Claims Administration process; and
7. Schedule a Fairness Hearing to review objections to this Settlement and to consider the fairness, reasonableness and adequacy of this Settlement and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Judgment approving this Settlement Agreement.

D. Class Counsel and Willis-Knighton will cooperate to undertake all reasonable actions in order to accomplish the above. In the event that the Court fails to grant Preliminary Approval or fails to issue a Final Judgment, Class Counsel and Willis-Knighton agree to use all reasonable efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court.

### **III. SETTLEMENT TERMS**

#### **A. Scope of Agreement and Retention of Jurisdiction**

1. Willis-Knighton agrees that it will not file a lien against an individual who is covered by health insurance unless specifically authorized to do so by virtue of any directive of any insurance company, statute, regulation, other law, or contractual provision, whether in existence now or coming into existence at some future time, even if such action may violate the terms of this Settlement Agreement, and Willis-Knighton shall not be held liable or subject to any claim for relief under the terms of this Settlement Agreement for any such action.

2. Following the Effective Date, the Court shall retain jurisdiction over the Parties to this Settlement Agreement solely for purposes of addressing settlement administration matters and the enforcement of the terms of the Settlement Agreement.

**B. Restitution**

1. Certified Class Members Who Have Paid Willis-Knighton (Subclass 3). Within 30 days after the Effective Date, Willis-Knighton will make restitution to the Class Members as follows.

a. For each Class Member in Subclass 3 who does not have Outstanding Debt, Willis-Knighton will make a Settlement Payment to that Class Member in an amount equal to forty-five percent (45%) of all amounts paid to or collected by Willis-Knighton from that Subclass 3 Class Member on the Lien Claim, less thirty percent (30%) of the Settlement Payment for payment of an attorneys' fee to Class Counsel (provided such percentage is approved by the Court).

b. For each Class Member in Subclass 3 with Outstanding Debt, Willis-Knighton agrees to reduce, waive, and forgive the amount of his or her Outstanding Debt to Willis-Knighton up to forty-five percent (45%) of all amounts charged to that Class Member by Willis-Knighton on the Lien Claim ("Subclass 3 Reduction") after netting out thirty percent (30%) of the Subclass 3 Reduction for attorneys' fees if approved by the Court ("Settlement Credit") until any such Outstanding Debt is completely eliminated. If the Outstanding Debt is less than the Settlement Credit, the remaining balance on the Class Members' account after the Outstanding Debt is completely eliminated shall be paid to the Class Member in the form of a Settlement Payment. Only after all Outstanding Debt is eliminated as to that Class Member will the Class Member be entitled to receive a Settlement Payment in the amount of this remaining balance. The Claims Administrator will provide each Class Member of Subclass 3 who has an Outstanding Debt with a summary of the amount of the Outstanding Debt, the

credit provided by the settlement, and any Outstanding Debt Willis-Knighton claims is due from that Class Member.

2. Certified Class Members Who Owe Willis-Knighton (Subclass 4). For each Certified Class Member in Subclass 4 who has Outstanding Debt to Willis-Knighton:

- a. Willis-Knighton will reduce, waive, and forgive the amount of his or her Outstanding Debt to Willis-Knighton up to forty-five percent (45%) of all amounts charged to that Class Member by Willis-Knighton on the Lien Claim ("Subclass 4 Reduction") after netting out thirty percent (30%) of the Subclass 4 Reduction for attorneys' fees if approved by the Court the net amount shall be referred to as ("Settlement Credit");

- b. For those Members of Subclass 4 who have made payments on the Lien Claim, the Settlement Credit will be applied against their Outstanding Debt until any such Outstanding Debt is completely eliminated. If the Outstanding Debt owed by that Class Member is less than the Settlement Credit he or she is being provided, the remaining balance on the Class Members' account after the Outstanding Debt is completely eliminated shall be paid to the Class Member in the form of a Settlement Payment.

- c. The Claims Administrator will provide each Class Member with a summary of the amount of that they owe Willis-Knighton as a result of this settlement.

3. Willis-Knighton will not assert that any Settlement Payments made according to the terms of this Settlement Agreement are income to the Class Member and will not generate and send an IRS Form 1099 for forgiveness of debt.
4. The consideration described in paragraphs III.B.1, III.B.2 & III.B.3, (including subparagraphs) above, is the only consideration to which any Class Members (excluding the payments to the Class Representatives described in paragraph

5. The names, addresses, social security numbers of each member of each class, and amounts collected from each member of each class are contained on a computer disk filed with the Court under seal to protect the privacy of each class member.

#### **IV. NOTIFICATION TO CERTIFIED CLASS MEMBERS**

A. The Court-approved Claims Administrator shall be responsible for implementing the Notice to the Certified Class.

B. The Claims Administrator shall be responsible for, without limitation: (i) arranging for the mailing of the Notice to the Class Members and the creation of an Internet site dedicated to informing Class Members about the status and terms of the Settlement Agreement; (ii) responding to the requests for the Notice; and (iii) payment of any amounts due to the Members of Subclass 3. The Notice Plan shall comply with all applicable federal and state requirements. All Notice and Claims Administration Expenses shall be paid by Willis-Knighton.

C. Notice Plan Implementation.

1. Confidentiality. The Claims Administrator (and any person retained by the Claims Administrator) shall sign a confidentiality agreement form agreed to by Class Counsel and Willis-Knighton, which shall provide that the names, addresses and other information about specific Certified Class Members provided either by Willis-Knighton, Class Counsel or by individual Certified Class Members shall all be treated as confidential and shall be used by the Claims Administrator only as required by this Settlement Agreement.

2. Internet Notice. The Parties agree that Notice shall be posted on an Internet website to be created and maintained by the Claims Administrator and dedicated to the settlement and Class Counsel's website. The internet Notice shall be substantially in the same form as the exemplar attached as Exhibit A. The Claims Administrator and Class Counsel shall post on these respective websites the Notice, the Preliminary Approval Order, the Settlement Agreement, and such additional information as agreed to by counsel for the Parties.

4. Individual Notice. The Claims Administrator or person(s) under the control and supervision of the Claims Administrator shall mail the Notice by first-class postage prepaid U.S. Mail, to all class members as identified by Willis-Knighton.

a. The Notice will be approved as to form and content by the Court and be substantially in the form attached as Exhibit A, unless otherwise modified by agreement of the Parties and approved by the Court. The Claims Administrator will review Willis-Knighton's address data, check it for valid addresses, eliminate duplications and process the addresses through the National Change of Address database, and use all reasonable and practicable methods to notify all Class Members. Willis-Knighton shall provide the Claims Administrator all available address information within Willis-Knighton's patient database regarding all Class Members.

b. If any Notice mailed to any Settlement Class Member in accordance with paragraph IV.C.4.a is returned as undeliverable, the Claims Administrator will promptly log each Notice that is returned as undeliverable and shall promptly provide copies of the log to Class Counsel. If the mailing is returned to the Claims Administrator with a forwarding address, the Claims Administrator will forward the mailing to that address. Upon request, the Claims Administrator shall provide Class Counsel such reasonable access to the notice process as they may need to monitor compliance with the Notice Plan.

5. Notice. The Claims Administrator shall also provide a copy of the Notice to anyone who requests the Notice.

6. Proof of Notice. The Claims Administrator shall provide affidavits to the Court, with a copy to Class Counsel and Willis-Knighton, attesting to the measures undertaken to provide notice to Class Members prior to the Fairness Hearing.

7. Costs of Notice and Administration. Willis-Knighton shall pay all Notice and Claims Administration Expenses.

## **V. CLAIMS ADMINISTRATION**

A. A Qualified Settlement Fund, as described in U.S. Treasury Regulation 1.468B-1, will be established by the Claims Administrator for the purpose of implementing this Settlement Agreement.

B. The Claims Administrator will make Settlement Payments to Class Members eligible to receive such payments in accordance with paragraphs III.B.1.a & III.B.1.b within

checks will require positive identification by the addressee in order to cash or otherwise negotiate the checks. In addition, the Settlement Administrator will use Positive Pay or other similar services to best avoid against false endorsements and errors.

C. If the Class Member cannot be located and verified pursuant to the Claims Administration Process described in parts IV.C and/or V.B, or if a settlement check is not negotiated within one hundred eighty (180) days of its issuance, the funds owed to that class member shall be considered "available cy pres funds." All settlement checks will expire and be of no value upon the expiration of one hundred eighty (180) days from issuance.

D. No payment is due to any Class Member unless he or she meets the requirements of part III.B, including subparts.

E. Claimants who do not meet the eligibility requirements to be Class Members have no right to or interest in any relief from Willis-Knighton under the terms of the Settlement Agreement, and no debt exists between Willis-Knighton and any such Claimants. The rights and interest of each Class Member shall be limited to the Settlement Payment outlined in part III.B (including subparts).

F. In the event a class member objects to the amount of his or her Settlement Payment or credit to the Outstanding Debt, the Claims Administrator and counsel for the Parties shall be so notified. A class member need not object to the Settlement Agreement in order to object to the amount of his or her Settlement Payment or credit to his or her Outstanding Debt, provided that he or she submits a written objection to the amount of his or her Settlement Payment or credit to the Outstanding Debt, explaining the basis for the objection and providing any documentation supporting his or her objection, that is post-marked within ninety (90) days of the date of his or her settlement check or within ninety (90) days of the date of the letter from the Claims Administrator notifying him or her of any credit. Unless a Class Member postmarks an objection to his or her Settlement Payment or credit within ninety (90) days of the date of the Settlement Payment or other letter from the Claims Administrator, any objection he or she may have shall be waived, and all Settlement Payments and credits will be final. If the disputed claim cannot be resolved within thirty (30) days, the dispute shall be submitted to a Neutral Evaluator

binding for resolution. The decision of the Neutral Evaluator shall be based on the terms of this Agreement, any objective, verifiable information submitted by the parties, and Louisiana law. The decision of the Neutral Evaluator shall be binding on the parties and not subject to appeal or other review process.

G. A Claimant who cashes or otherwise negotiates any Settlement Payment received under the Settlement Agreement is deemed to have waived his or her rights to pursue further relief against Willis-Knighton based on any of the Released Claims.

H. Payments that are to be made pursuant to this Settlement Agreement will be made within thirty (30) days after the Effective Date.

I. No person shall have any claim against Willis-Knighton, and/or their respective Counsel, the Plaintiffs, the Certified Class, Class Counsel, or the Claims Administrator or any employees, representatives, agents, and independent contractors of the law firms or parties who may furnish services in connection with the Settlement Agreement for anything done or omitted in connection with the Settlement Agreement and/or Claims Administration Process under it except for their own willful misconduct. This provision does not affect or limit in any way the right of review by the Court of any disputed payments, set off or determinations of the amount of any settlement award payments, to the extent provided above. Neither Willis-Knighton, nor Plaintiffs, nor any of the Parties' counsel shall be liable for any act or omission of any Neutral Evaluator.

J. If this Settlement Agreement is not approved or for any reason the Effective Date does not occur, no payments or distributions of any kind shall be made pursuant to this Settlement Agreement.

K. All proceedings with respect to administration, processing and determination of claims described in this Settlement Agreement, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

L. The parties agree to a distribution of *cy pres* available funds resulting from Settlement Payments sent to class members that cannot be located or who fail to negotiate the settlement check within one hundred eighty (180) days of its issuance. The amount of these

*pres* distribution shall be made to the Trauma Center at Louisiana State University Medical Center in Shreveport, Louisiana, a non-profit, charitable organization operating in Louisiana.

M. This agreement is not evidence of, or an admission by, any Class Member of the correctness of any class member's Outstanding Debt or any other debt allegedly owed to Willis-Knighton by the Class Member.

## **VI. OBJECTIONS BY CERTIFIED CLASS MEMBERS**

A. Class Members may object to the Proposed Settlement. Any Class Member who intends to object to the fairness, reasonableness and adequacy of the Class Settlement ("Objectors") must file a written Objection ("Objections") with the Court and mail a copy to the Claims Administrator, to Willis-Knighton and, to Class Counsel at the address as set forth below postmarked not later than the date specified in the Court's Preliminary Approval Order and the Notice, which will be at least twenty-one (21) days prior to the Fairness Hearing. Class Members making objections must set forth their full name, current address and telephone number. Objections must be served:

Upon the First Judicial District Clerk of Court

Office of the Clerk of Court  
Honorable Gary Loftin  
501 Texas Street, Room 103  
Shreveport, Louisiana 71101

Upon Claims Administrator at

Rust Consulting, Inc.,  
P.O. Box 5272  
Faribault, Minnesota 55021-9572

Upon Willis-Knighton at:

Mr. Lamar P. Pugh  
Pugh, Pugh & Pugh  
P.O. Box 1711  
Shreveport, Louisiana 71166

Upon Class Counsel at:

Mr. J. Patrick Hennessy  
Law Office of J. Patrick Hennessy  
Post Office Box 91  
Shreveport, Louisiana 71161



B. Objectors must state in writing all Objections, including the specific reasons why the Class Member objects to the Proposed Settlement and the reasons therefore, and a statement whether the Objector intends to appear at the Fairness Hearing either with or without separate counsel. No Class Member shall be entitled to be heard at the Settlement Fairness Hearing (whether individually or through separate counsel) or to object to the Settlement Agreement, and no written objections or briefs submitted by any member of the Certified Class shall be received or considered by the Court at the Settlement Fairness Hearing, unless written notice of the class member's intention to appear at the Settlement Fairness Hearing and copies of any written objection or briefs shall have been filed with the Court and served on the Claims Administrator and counsel for Parties on or before the date specified in the Preliminary Approval Order and Notice, which will be at least twenty-one (21) days prior to the Fairness Hearing. Members of the Certified Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objection (whether by appeal or otherwise) to the Settlement Agreement. Any Class Member who files a timely notice of intent to object, but does not appear at the Fairness Hearing, shall waive the right to object and shall be forever barred from making any objection to the Proposed Settlement. To the extent any Class Member(s) objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Class Member(s) will be forever bound by the Final Judgment of the Court.

C. Upon expiration of the deadline for filing objections to the Settlement Agreement as set forth in the Preliminary Approval Order and Notice, and on the date set forth in the Preliminary Approval Order, a settlement Fairness Hearing shall be conducted to determine final approval of the settlement along with the amount properly payable for attorneys' fees, costs and expenses. Upon final approval of the settlement by the Court at or after the settlement Fairness Hearing, the Parties shall present the Final Order and Judgment to the Court for approval.

## **VII. RELEASES, DISMISSAL OF ACTION AND JURISDICTION OF COURT**

A. It is hereby agreed that upon the Effective Date, the Plaintiffs and all Certified Class Members and their heirs, executors, estates, predecessors, successors, assigns, agents and representatives shall be deemed to have jointly and severally released and forever discharged

shall be fully and forever barred and enjoined from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against any of the Willis-Knighton.

B. Upon the Effective Date, the above captioned proceeding shall be dismissed with prejudice as to Willis-Knighton.

C. Notwithstanding the above, the Court shall retain jurisdiction over the Parties to the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement. In the event that any applications for relief are made, such applications will be made to the Court.

D. Upon the Effective Date: (i) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Class Members; and (ii) the Released Parties shall not be subject to liability or expense of any kind to any Class Members, who shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal with regard to any and all Released Claims.

E. The Released Claims are the "Settled Claims" pursuant to this Settlement Agreement.

#### **VIII. DISAPPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

A. Within fourteen (14) business days after notice of the occurrence of any of the following events, either Party shall have the right, exercisable at its own discretion, to terminate this Settlement Agreement by delivering written notification of such election to the other Party, if:

(a) The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Settlement Agreement or any portion of this Settlement Agreement that the Party, in its sole judgment and discretion, believes to be material, including, but not limited to, the terms of the Settlement Class relief, the provisions relating to notice, the class definition or identify of Class Members, and the Released Claims;

(b) The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any portion of the Settlement Agreement, Preliminary Approval Order or

(c) If any regulatory agency or governmental agency should challenge any of the terms of the Settlement Agreement in any way that is materially adverse to either Party's interests without their written consent;

B. In addition, Willis-Knighton shall have the right, exercisable at its own discretion, to terminate this Settlement Agreement by delivering written notification of such election to Class Counsel within fourteen (14) business days after notice of the occurrence of any of the following events, if:

(a) If the Class Representatives, their attorneys, or any Class Member with an attorney-client relationship to Class Counsel, or their firms, objects to the Settlement Agreement; or

(b) Any financial obligation is imposed upon Willis-Knighton in addition to and/or greater than those specifically accepted by Willis-Knighton in this Settlement Agreement.

C. If an option to withdraw from and terminate this Settlement Agreement arises under paragraph VIII.A or VIII.B., including subparts, it shall not be a requirement to exercise that option.

D. If the proposed Settlement Agreement shall fail for any reason other than a breach by one of the parties, or if this Settlement Agreement shall be terminated by either Party pursuant to paragraphs VIII.A or VIII.B:

(a) This Settlement Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Settlement Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any of the putative Class Members;

(b) This Settlement Agreement, all of its provisions (including, without limitation, any provisions regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Settlement Agreement;

(c) This Settlement Agreement, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), and the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever;

(d) Any judgment or order entered after the date of this Settlement Agreement will be vacated and will be without any force or effect. The Parties agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement Agreement; and

(e) The Parties agree that they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that the Settlement Agreement and related pleadings and filings, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), the fact of this Settlement Agreement having been made, and any settlement negotiations preclude Willis-Knighton from opposing certification or the claims in the Action or any other proceeding.

E. Part VIII.D above shall survive any termination of this Settlement Agreement.

#### **X. SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

A. In the event the Settlement Agreement is terminated according to its terms, (i) all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any Party of any act, matter or proposition and shall not be used in any manner or for any purpose in any subsequent proceeding in the Litigation or in any other action or proceeding; (ii) other than as expressly preserved by this Agreement in the event of its termination, this Agreement shall have no further force and effect with respect to any Party and shall not be used in the Litigation or any other proceeding for any purpose; and (iii) any Party may elect to move the Court pursuant to the provisions of this paragraph, and none of the nonmoving Parties (or their counsel) shall oppose any such motion.

B. Willis-Knighton and the related parties deny any and all charges alleged in the Action and deny all wrongdoing whatsoever. Whether or not the Settlement Agreement is

conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any event be disclosed or referred to for any purpose, or offered or received in evidence, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding against Willis-Knighton or any of the related parties except for purposes of settling this action pursuant to this Settlement Agreement. The limitations set forth in this paragraph do not apply to use and/or disclosure by Willis-Knighton or any of the related parties against members of the Certified Classes or third parties for purposes of supporting a defense or counterclaim of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory or claim of issue preclusion or similar defense or counterclaim.

#### **XI. ATTORNEYS' FEES AND EXPENSES**

A. As part of this Settlement Agreement, Willis-Knighton has agreed to pay \$85,000.00 to reimburse Class Counsel for expenses incurred in connection with this litigation. Included in the \$85,000.00 payment for expenses is a payment to each of the Class Representatives of \$10,000.00 each for their efforts on behalf of the classes. Willis-Knighton will also pay all outstanding court costs incurred to the above captioned proceeding.

B. Class Counsel's entitlement to an award of attorneys' fees, costs, and expenses will be determined by the Court. Class Counsel will file a motion with the Court requesting a fee equal to the sum of:

1. Thirty percent (30%) of the reduction described in paragraph III.B.1.a above.
2. Thirty percent (30%) of the Subclass 3 Reduction described in paragraph III.B.1.b.
3. Thirty percent (30%) of the Subclass 4 Reduction described in paragraph III.B.2.a above.

C. Willis-Knighton agrees not to object and to pay the attorneys' fees payments described in paragraphs XI.B.1, XI.B.2, and XI.B.3 if the Court awards those amounts to Class Counsel.

D. Willis-Knighton will be entitled to deduct any attorneys' fees paid by Willis-Knighton that are attributable to the attorneys fees paid pursuant to paragraph XI.B.1 above

before making any Settlement Payments to the members of Subclass 3 in accordance with paragraphs III.B.1.a.

E. Willis-Knighton and their attorneys agree not to oppose any application for attorneys' fees, costs or expenses by Class Counsel so long as such applications are consistent with the provisions of this Settlement Agreement

F. All attorneys' fees and expenses awarded by the Court to Class Counsel shall be paid by Willis-Knighton within thirty (30) days of the Effective Date. Willis-Knighton shall make such payments to J. Patrick Hennessy, at Law Office of J. Patrick Hennessy, Post Office Box 91, Shreveport, Louisiana 71161. Willis-Knighton shall have no liability or other responsibility for the allocation of such attorneys' fees among and between Class Counsel or any other counsel for Plaintiffs. In the event that any dispute arises relating to the allocation of such fees, then each and all Class Counsel and Class Representatives agree, by their signatures below, to hold Willis-Knighton harmless from any and all liabilities, costs and expenses.

G. All court costs shall be paid within thirty (30) days of the Effective Date by Willis-Knighton to the Clerk of Court for the First Judicial District Court, Caddo Parish, Louisiana with instructions to refund all costs paid by Class Counsel to Class Counsel.

H. Willis-Knighton's payment of Class Counsel's attorneys' fees, costs and expenses as described herein shall constitute full satisfaction of Willis-Knighton's obligation to pay any person, attorney or law firm for attorneys' fees, costs and expenses incurred on behalf of the Class Representatives and the Certified Classes, and shall relieve Willis-Knighton and the related parties from any other claims or liability to any other attorney or law firm or person for any attorneys' fees, expenses and costs to which any of them may claim to be entitled on behalf of the Class Representatives and the Certified Classes that are in any way related to the Released Claims.

## **XII. CONFIDENTIAL DISCOVERY MATERIALS**

Within fifteen (15) days of the Effective Date, Class Counsel shall return to counsel for Willis-Knighton, or provide to counsel a certification under oath of the destruction of, all matter produced in discovery in the Action.

### **XIII. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. Class Counsel who are signatories hereof represent and warrant that they have the authority, on behalf of Class representatives Bessie Tyler and Donna Atkins, to deliver and perform this Settlement Agreement and to consummate the transactions contemplated hereby. Class Counsel further warrants and represents that they have authority to seek the dismissal with prejudice of each of the Related Actions, as contemplated above. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal valid and binding obligation.

B. Willis-Knighton represents and warrants that it has authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Willis-Knighton of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Willis-Knighton. This Settlement Agreement has been duly and validly executed and delivered by Willis-Knighton and constitutes its legal, valid and binding obligations.

### **XIV. MISCELLANEOUS PROVISIONS**

A. Neither this Settlement Agreement, approved or not approved, nor any exhibit, document or instrument delivered hereunder, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement is intended to be or shall be construed as or deemed to be evidence of any admission or concession by Willis-Knighton of any liability or wrongdoing or of the truth of any allegations in any complaint, and none of them shall be admissible in evidence for any such purpose in this or any other proceeding.

B. To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Settlement Agreement.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. This Settlement Agreement, including all appendices and exhibits attached hereto, may not be modified or amended except in writing signed by all Parties and approved by the Court. Amendments and modifications to this settlement Agreement may be made with consent of all Parties without further notice to the Class Members unless otherwise ordered by the Court.

E. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Settlement Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/or counsel.

F. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Louisiana, without giving effect to any of its conflict of laws provisions.

G. Any dispute as to the interpretation, construction, or operation of this Settlement Agreement will be submitted to Frank Thaxton for resolution, and his decision on these matters will be binding, final, and not subject to appeal or other review process. All charges by Frank Thaxton pursuant to this paragraph shall be split equally between the Class Counsel and Defense Counsel.

H. Except as specifically provided in this Settlement Agreement, each Settling Party shall bear its own costs and attorneys' fees including taxable court costs.

I. Integrated Agreement.

1. All of the Exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference.
2. This Settlement Agreement and the Exhibits hereto constitute the entire fully integrated agreement among the Settling Parties and cancel and supercede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action. The Parties each covenant and



undertaking not set forth in writing herein to enter into this Settlement Agreement.

J. If any provision, paragraph, section, article, or other portion of this Agreement is found to be void, all of the remaining portions of this Agreement shall remain in effect and be binding upon mutual agreement of the Parties.

K. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of that time that might be necessary to carry out any of the provisions of this Settlement Agreement.

L. Any notice, request or instruction or other document to be given by any Party to this Settlement Agreement to any other Party to this Settlement Agreement (other than class notification) shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid:

To Claims Administrator at:

Rust Consulting, Inc.,  
625 Marquette Avenue, Suite 880  
Minneapolis, Minnesota 55402-2469

To Willis-Knighton at:

Mr. Lamar P. Pugh  
Pugh, Pugh & Pugh  
P.O. Box 1711  
Shreveport, Louisiana 71166

To Class Counsel at:

Mr. J. Patrick Hennessy  
Law Office of J. Patrick Hennessy  
Post Office Box 91  
Shreveport, Louisiana 71161

M. The determination of the terms of, and the drafting of, this Settlement Agreement including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Because this Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and

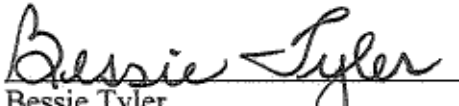
execution of this Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

N. The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of this action and have arrived at this Settlement Agreement in arm's-length negotiations, taking into account all relevant factors, present and potential.

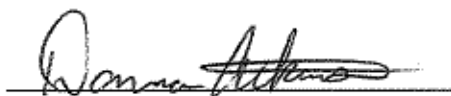
O. If Class Counsel and/or the Class Representatives receive media requests about any settlement, communications, negotiations, or discussions (including, but not limited to the May 24, 2011, letter and any other settlement negotiations), Class Counsel and/or the Class Representatives shall either refer such media inquiries to the public record of the Action or respond through a press release mutually agreed upon by the Parties.

IN WITNESS WHEREOF, the Parties and their respective counsel have executed this

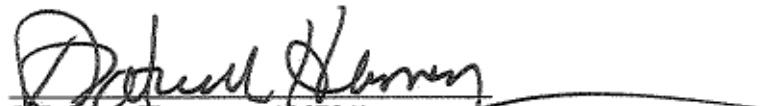
Settlement Agreement as of the date(s) indicated on the lines below:

  
Bessie Tyler

Date: 8/25/11

  
Donna Atkins

Date: 8/24/2011

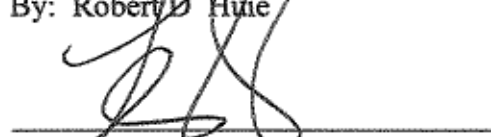
  
J. Patrick Hennessy (#6791)  
**LAW OFFICE OF J. PATRICK HENNESSY**  
P.O. Box 91  
Shreveport, Louisiana 71161  
Class Counsel

Date: 8/23/11

ALAN STEGALL (#25885)  
**LAW OFFICE OF ALAN STEGALL**  
P.O. Box 91  
Shreveport, Louisiana 71161  
Class Counsel

KEITH M. WELCH (#13347)  
**SIMON, FITZGERALD, COOKE, REED & WELCH**  
4700 Line Avenue, Suite 200  
Shreveport, Louisiana 71106-1546  
Class Counsel

  
WILLIS-KNIGHTON MEDICAL CENTER  
By: Robert D. Huie

  
Lamar P. Pugh (#20070)  
**PUGH, PUGH & PUGH**  
P.O. Box 1161  
Shreveport, LA 71166

Date: 8/23/11

Mr. James Beatty  
P. O. Box 16825  
Jackson, MS 39236  
Counsel for Willis-Knighton

Mr. Jeffrey Layne  
Marcy Greer  
**Fulbright & Jaworski, L.L.P.**  
98 San Jacinto, Suite 1100  
Austin, Texas 78701  
Counsel for Willis-Knighton  
Ms. Lesley Reynolds  
**Fulbright & Jaworski L.L.P.**  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2623  
Counsel for Willis-Knighton