

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**DR. JOY WEINBERG, MD, individually and on
behalf of all others similarly situated,**

Plaintiff,

vs.

**NORTH SHORE-LIJ HEALTH SYSTEM,
Defendant.**

**CLASS ACTION
COMPLAINT**

Index No.

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

**Venue is Predicated on
Plaintiff = Presence and
Defendant = Presence**

Plaintiff Dr. Joy Weinberg, MD, individually and on behalf of all other persons similarly situated, by her undersigned attorneys, for her Class Action Complaint against North Shore-LIJ Health System and its member hospitals (“North Shore-LIJ”), alleges the following based upon personal knowledge as to herself and her own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through her attorneys.

NATURE OF THE ACTION

1. This action is brought on behalf of a class consisting of Plaintiff and all other persons who were medical residents, including fellows in training programs (“Medical Residents”) at North Shore-LIJ, from January 1, 1995, through and including March 31, 2005 (the “Class Period”).

2. During the Class Period, Defendant withheld and remitted Federal Insurance Contributions Act (“FICA”) taxes (both Social Security and Medicare) from Medical Residents

which they, as students, were not required to pay.

3. In 2010 the Treasury Department made available a refund of the FICA taxes to the Medical Residents. In July and August 2010, Defendant mailed a consent form (the "Consent Form") for that refund to its former students at the address it had on file up to 15 years earlier. The Consent Form needed to be returned in less than two months for the Medical Residents to be eligible for the refund.

4. Notice mailed to addresses up to 15 years old was not the best notice practicable under the circumstances.

5. Medical Residents' addresses could have been cheaply and easily updated to their current addresses. Where social security number is available, as it was to Defendant here, it costs approximately \$1.50 per corrected address to obtain current home addresses from credit bureaus. It costs nothing if the address you have is already correct. Here, it therefore costs \$1.50 to obtain tens of thousands of dollars in FICA refunds for each class member for whom you have an out of date address.

6. In addition, Medical Doctors are strictly licensed and are easily and cheaply located from state medical boards, public websites, and through other related means. No notice of the FICA refund was published and 45 days to respond to a mailed notice is inadequate.

7. In the alternative, the Internal Revenue Service has the current address of every one of the doctors and had the ability to apprise Defendant of those addresses.

8. Defendant's breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence severely damaged Plaintiff and the other members of the Class.

PARTIES

Plaintiff

9. Plaintiff Joy Weinberg, MD was a Medical Resident during the Class Period at hospitals in Defendant's healthcare network. Specifically, from July 2001 through June 2004, Dr. Weinberg was an intern and then a resident in the Internal Medicine Department of North Shore University Hospital in Manhasset, New York. Subsequently, from July 2004 through June 2005, Dr. Weinberg was a Fellow in training at Lenox Hill Hospital in New York, New York.

Defendant

10. Defendant North Shore-LIJ Health System was founded in 1997 with the merger of the North Shore Health System and LIJ Medical Center, creating a healthcare network that includes 16 hospitals. North Shore-LIJ is the largest integrated health system in New York State, based on patient revenue, and the second-largest, nonprofit, secular healthcare system in the United States, based on number of beds. Its service area encompasses more than 7 million people in Long Island, Manhattan, Queens and Staten Island.

11. As a clinical medical educational institution, North Shore-LIJ is responsible for more than 1,500 residents and fellows, and 115 resident and fellow programs. North Shore-LIJ maintains relationships with three medical schools.

JURISDICTION AND VENUE

12. Defendant does business in the State of New York. Venue is predicated on the fact that Defendant has principal places of business, including Lennox Hill Hospital, located in New York County, where Plaintiff received some of her training as a Medical Resident.

PLAINTIFF'S CLASS ALLEGATIONS

13. Plaintiff brings this action on her own behalf and as a class action pursuant to CPLR Article 9 on behalf of a class consisting of all persons who were medical residents or fellows in training, at Defendant's various hospitals, between January 1, 1995 and March 31, 2005, inclusive.

- a. Because Defendant trained thousands of Medical Residents, joinder of all members of the Class is impracticable. While the exact number of Class Members can only be determined by appropriate discovery, Plaintiff believes there are thousands of Class Members who did not receive adequate notice.
- b. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class sustained damages as a result of Defendant's wrongful conduct complained of herein.
- c. A class action is superior to other available methods for the fair and efficient adjudication of this action. Since the damages suffered by individual Class Members will be relatively small in most cases, the expense and burden of litigation makes it virtually impossible for Class Members individually to seek redress for the wrongful conduct alleged herein.
- d. Plaintiff will fairly and adequately protect the interests of the other members of the Class and has retained counsel competent and experienced in class action litigation.
- e. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the class are:

- i. whether Defendant breached its implied covenant of good faith and fair dealing with its Medical Residents;
- ii. whether Defendant was negligent;
- iii. whether Defendant breached its fiduciary duty to its Medical Residents;
- iv. whether Defendant breached its implied contract to withhold and remit the proper taxes and to make reasonable efforts to correct any errors made in doing so; and,
- v. whether the members of the Class have sustained damages and, if so, the appropriate measure thereof.

f. Notice can be provided to the Class by means of mail to Class Members current address and by publication of a form of notice similar to those customarily used in other class action litigations.

14. Plaintiff knows of no difficulty that will be encountered in the management of this action that would preclude its maintenance as a class action.

BACKGROUND FACTS

15. This action is brought on behalf of a class consisting of Medical Residents who were trained at Defendant, from January 1, 1995, through and including March 31, 2005. During that time, Defendant improperly withheld from its Medical Residents and remitted to the Internal Revenue Service Federal Insurance Contributions Act (“FICA”) taxes (both Social Security and Medicare) from Medical Residents which they, as students, were not required to pay.

16. Defendant was aware that Medical Residents, because they were students, were not required to pay FICA taxes, but, nevertheless, withheld and remitted the taxes. Beginning in 1995, Defendant filed FICA refund claims with the Internal Revenue Service.

17. The Treasury Department, in late 2004, effective April 1, 2005, amended its rules concerning the FICA taxation of Medical Residents on a going forward basis, to subject the Medical Residents to FICA taxation.

18. On March 2, 2010 the IRS publically admitted that Medical Residents had been exempt from FICA taxation for the Class Period.

FACTS

19. During the week of July 26, 2010, Defendant mailed a Consent Form for the refund of the improperly withheld FICA taxes to its former students at the address it had on file up to 15 years earlier. Defendant required the Consent Form to be completed and returned by September 15, 2010, only a month and a half later. For Class Members trained at Lennox Hill Hospital, one of Defendant's member hospitals, the Consent Forms were mailed the week of August 30, 2010, with a return date of October 11, 2010.

20. Defendant did not adequately update its addresses to the current address where its former students were now living. Where social security number is available, as it was to Defendant here, it costs approximately \$1.50 per corrected address to obtain current home addresses from credit bureaus. It costs nothing if the address you have is already correct. It therefore costs \$1.50 to obtain tens of thousands of dollars in FICA refunds for each class member for whom you have an out of date address.

21. Notice by mail in mid-2010 addressed to the address of Medical Residents who were trained between January 1, 1995 and March 31, 2005, inclusive, is facially inadequate. Over that 15 year period, the Medical Residents became Medical Doctors and moved to better housing (from their student housing) driven by their higher income, job requirements, and changes in family status.

22. Plaintiff and other members of the Class did not receive notice of the FICA tax refund.

23. The Notice Program was not the best notice that is practicable under the circumstances:

- a. Where social security number is available, as it was to Defendant here, it is easy and cheap to obtain current home addresses;
- b. Medical doctors are strictly licensed and are easily and cheaply locatable from state medical boards, their public websites, and through other related means;
- c. No notice of the FICA refund was published;
- d. Approximately 45 days to respond to a mailed notice is inadequate; and,
- e. In the alternative, the Internal Revenue Service had the current address of every Medical Resident and had the ability to apprise Defendant of those addresses.

24. FICA taxes were paid by both Defendant and its Medical Residents. Defendant received full reimbursement for its portion of the FICA taxes.

COUNT I

Breach of Fiduciary Duty

25. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.

26. Defendant had a fiduciary duty to use the best notice practicable under the circumstance. Instead, Defendant mailed notice to home addresses that may not have been updated in over a decade and a half. Mailing notice to an address that is more likely than not to be undeliverable, especially when the cost to obtain the current address is cheap, is a breach of fiduciary duty.

23. As a result of Defendant's breach of its fiduciary duty, Plaintiff and other members of the Class have suffered damage in the form of lost refunds of the FICA taxes that they unwittingly paid. Damages sustained by Plaintiff and the other Class members were a direct and foreseeable result, and were proximately caused by, Defendant's breaches of its fiduciary duties.

24. Defendant's conduct was willful, wanton, and reckless. Based on the nature of Defendant's conduct, Defendant should be held liable to Plaintiff and other Class members for actual damages in an amount to be determined at trial.

COUNT II

Breach of Contract

25. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

26. In connection with the educational services provided by Defendant to Medical Residents, there is an implied contract on the part of Defendant to Plaintiff and the other members of the Class that Defendant will only calculate and remit to the Treasury Department the actual taxes due, and, if an error is made, use all available means to correct that error.

27. Defendant breached its contract by, among other things, deducting and remitting FICA taxes that should not have been paid, and then failing to use reasonable efforts to obtain a refund of those taxes for Plaintiff and the other members of the Class.

28. By reasons of the foregoing, Plaintiff and other members of the Class are entitled to compensatory damages in the amount to be determined at trial.

COUNT III

Breach of the Implied Covenants of Good Faith and Fair Dealing

29. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

30. In connection with the educational services provided by Defendant to Medical Residents, there is an implied covenant of good faith and fair dealing on the part of Defendant to Plaintiff and the other members of the Class.

31. Defendant breached the covenant of good faith and fair dealing by, among other things, failing to use reasonable efforts to notify Plaintiff and the other Class members of the availability of the FICA tax refund.

32. Defendant's conduct was willful, wanton, and reckless, so that Defendant should be held liable to Plaintiff and other Class members for actual damages in an amount to be

determined at trial.

COUNT IV

Negligence

33. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.

34. Defendant undertook and accepted the responsibility to notify Plaintiff and the other members of the Class of the availability of the FICA tax refund.

35. Defendant's notice program was not the best notice practicable under the circumstances, and was not individual notice to Class members who could have been identified with reasonable effort.

36. Defendant's notice program was so deficient and so unreasonable that is violated the most liberal interpretation of the duty of care it owed to Plaintiff and the other members of the Class.

37. Defendant's conduct as described herein was, at minimum, negligent.

38. The damages sustained by Plaintiff and the other Class members were a direct and foreseeable result of, and were proximately caused by, Defendant's negligence.

39. As a result of Defendant's actions, Plaintiff and the other Class members have been damaged and injured, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the other members of the Class, demands judgment as follows:

A. Declaring this action to be a proper plaintiffs' class action maintainable pursuant to CPLR Article 9, declaring Plaintiff to be a proper representative of the Class

and Plaintiff's counsel as Lead Counsel;

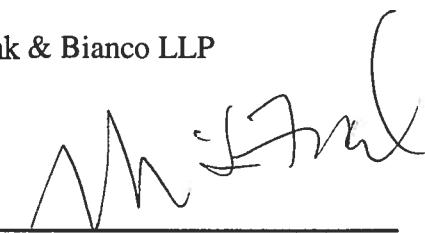
B. Awarding compensatory damages in favor of Plaintiff and the other Class members against Defendant for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including interest, counsel fees, and expert fees; and,

D. Awarding such other and further relief as may be just and proper under the circumstances.

Dated: April 5, 2013

Frank & Bianco LLP

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