

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

**JULIAN FORD**

**Plaintiff**

**v.**

**CHARTONE, INC.**

**Defendant**

**Civil Action No: 02 CA 7111**

**Calendar 9**

**Judge Jennifer M. Anderson**

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**ORDER PRELIMINARILY APPROVING PROPOSED  
SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANT,  
CONDITIONALLY CERTIFYING SETTLEMENT CLASS, AND  
APPROVING CLASS NOTICE AND NOTICE OF HEARING**

Upon review and consideration of the Consent Motion for Preliminary Approval of Settlement of Class Action, and the exhibits attached thereto, and the settlement reached between the named plaintiff in the above-captioned action, Julian Ford (the “Class Representative”), individually and as representative of the class conditionally certified by this Order, and ChartOne, Inc. (“Defendant”), it is this 3<sup>rd</sup> day of August 2007, hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**I. PRELIMINARY APPROVAL OF SETTLEMENT**

1. The Settlement Agreement is hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court preliminarily finds that the settlement terms are within the range of a fair, reasonable, and adequate settlement and in the best interests of the Class as a whole, such that final settlement approval may be appropriate, following notice to the Class. The Court further tentatively finds that the terms of the Settlement Agreement satisfy District of Columbia Superior Court Rule of Civil Procedure 23(e) and due process requirements.

2. The Court has set the following dates for purposes of this class action:

a. Mailing Class and Settlement Notice to Class, and sending a copy of the Notice to the D.C. Trial Lawyers email list serve: Within 30 days from the docketing of this Order.

b. Deadline for objections: Must be filed, with copies mailed and postmarked to the attorneys of record, within 60 days from the mailing of the Notice;

c. Deadline to opt-out: Must be postmarked within 60 days from the mailing of the Notice; and

d. Final Approval Hearing: January 11, 2008, at 2:00 p.m., in Courtroom A50.

e. In the event that the class notice is not mailed within the time specified herein, the subsequent dates contained herein will be deferred for the number of additional days before such notice occurs without the need for additional court approval. However, the Court must approve any change of the date of the Final Approval Hearing.

## **II. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

3. The Court preliminarily finds that the Class meets all the requirements for class certification for settlement purposes.

4. The Class shall be defined as:

Every patient who either directly, or through an agent (including an attorney),

(a) requested health care records from a health care provider in the District of Columbia, where the request was handled by ChartOne, AND

(b) ChartOne submitted an invoice for copies of those records dated from August 7, 1999 through the date of entry of this Order; AND

(c) (i) the patient paid ChartOne more than the rate charged to Maryland residents under the Annotated Code of Maryland, Health (General) Article, section 4-304, OR

(ii) for requests made directly by the patient or through a personal representative or health care agent on or after April 14, 2003, the patient paid ChartOne more than the per page rate, absent a clerical or preparation fee, charged to Maryland residents under the Annotated Code of Maryland, Health (General) Article, section 4-304.

5. The Court further finds preliminarily for settlement purposes that:

a. The Class is sufficiently numerous and ascertainable;

- b. The Class meets the commonality requirements as questions of law and fact common to the class predominate;
- c. The claims of the Class Representative are typical of the claims of the Class;
- d. The Class Representative has, and is able to adequately represent the Class. Further, the Class is adequately represented. Class Counsel are experienced and competent, and have zealously advocated on behalf of the Class;
- e. Common issues predominate over individual issues; and
- f. Maintenance of a class action is superior to individual actions.

6. The Court hereby conditionally certifies the Class under District of Columbia Superior Court Rules of Civil Procedure 23(b)(3), 23 (e) and 23-I for settlement purposes only. Should for whatever reason the Settlement not become final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

7. Julian Ford is hereby appointed and designated as Class Representative for the Class.

8. The following attorneys are hereby appointed and designated as counsel for the Class Representative and the Class (“Class Counsel”):

William Claiborne 717 D Street, NW, Suite 210 Washington, D.C. 20004 202-824-0700	Sean R. Day 8505 Baltimore Avenue, Suite B College Park, Maryland 20740 301-220-2270
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9. Class Counsel are authorized to act on behalf of the Class with respect to all acts or consents required by or which may be given pursuant to the Settlement, and such other acts reasonably necessary to consummate the Settlement.

### **III. NOTICE TO CLASS MEMBERS**

10. Within thirty (30) days after entry of this Order, the parties shall: (a) cause a Class and Settlement Notice, with substantially the form and content as contained in **Exhibit A** to the Motion for Preliminary Approval and incorporated herein by reference, to be mailed by first-class mail, postage pre-paid, to (i) all Class Members whose addresses can be obtained with reasonable diligence from ChartOne's records and, (ii) in the case of Class Members who requested through a representative such as an attorney, to all such representatives whose addresses can be obtained with reasonable diligence from ChartOne's records, along with a cover letter to the representative with substantially the form and content as contained in **Exhibit # A-1** Motion for Preliminary Approval and incorporated herein by reference; and (b) cause the Class and Settlement Notice to be published to the District of Columbia Trial Lawyers Association Internet list-serve.

11. By agreement of the parties, ChartOne will bear the cost of printing and mailing the Class and Settlement Notice to Class Members.

12. The Court finds that the notice required by the foregoing provisions is the best notice practicable under the circumstances and shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all Class Members and other persons affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Rule 23 and 23-I of the District of Columbia Superior Court Rules of Civil Procedure and due process.

### **IV. THE CLASS ADMINISTRATOR**

13. The Court approves the retention of The Garden City Group, Inc. as Class Administrator, which will be jointly retained and paid by the parties to receive claims and review them to determine that the claimant is a Class Member and paid for the records, and is therefore entitled to the \$15.00

payment per the Settlement Agreement.

14. The Class Administrator shall preserve all claim forms and written communications from Class Members in response to the Class and Settlement Notice at least until December 31, 2008, or pursuant to further order of the Court. All written communications received by the Class Administrator from Class Members relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Counsel for the Parties.

15. Class Counsel may perform any act committed herein to the Class Administrator.

## **V. THE FAIRNESS HEARING**

17. A Fairness Hearing shall be held on January 11, 2008, at 2:00 p.m., in Courtroom A-50, which is at least 120 days after the entry of this Order. At the Fairness hearing, the Court will consider the fairness, reasonableness, and adequacy of the Settlement, and whether a final order and judgment should be entered dismissing with prejudice the Lawsuit.

18. The date and time of the Fairness Hearing shall be set forth in the Class and Settlement Notice, but shall be subject to adjournment by the Court without further notice to the Class Members.

19. Any Class Member who objects to the approval of the Settlement Agreement may appear at the Fairness Hearing and show cause why the Settlement Agreement should not be approved as fair, reasonable, and adequate, and why the Final Order and Judgment should not be entered, except that no such Class Member may appear at the Fairness Hearing unless the Class Member, within 60 after the mailing of the Class Notice, (a) files with the Clerk of the Court a notice of such person's intention to appear and a statement that indicates the bases and grounds for such person's objection to the Settlement Agreement, and (b) serves upon all Counsel to the Parties copies of such notice of intention to appear and statement of objections. In the absence of the timely filing and timely

service of the objection(s) and notice of intention to appear, any objection shall be deemed untimely and denied.

20. All discovery and other pretrial proceedings in this action among the Parties are hereby stayed and suspended, except such proceedings as are provided for in the Settlement Agreement or which may be necessary to implement the terms of the Settlement Agreement or this Order.

21. Pending final approval of the Settlement Agreement, no Class Member shall, either directly, representatively, or in any other capacity, commence or prosecute against the Defendant or participate in any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action that are to be released by the Settlement Agreement upon final approval.

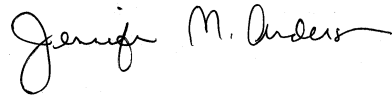
22. Upon final approval of the Settlement Agreement, all Class Members who have not opted out of the Settlement shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released by the Settlement Agreement, and all such Class Members shall be deemed to have forever released any and all such matters, claims and causes of action as provided for in the Settlement Agreement.

## **VI. OTHER PROVISIONS**

23. In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiff, Defendant, and Class Members.

24. If the Settlement is terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation, including but not limited to the completion of discovery, preparation of expert reports, the

filing of a summary judgment motion or motions, and preparation for trial.

A handwritten signature in cursive script that reads "Jennifer M. Anderson".

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Judge Jennifer M. Anderson  
(Signed in chambers)

**EXHIBIT A**

**Class Action Settlement Notice**

You are receiving this notice because ChartOne’s records indicate that you requested copies of medical records (either directly from your health care provider or through your lawyer) for which you were billed by ChartOne on or after August 7, 1999, and paid more than the amounts listed below. Under a class action settlement, you may be eligible to receive a \$15.00 payment from ChartOne.

This settlement arises from two lawsuits filed in District of Columbia Superior Court which allege that ChartOne overcharged persons who requested copies of their medical records (either directly or through a lawyer). The two cases are: Ford v. Chartone, Inc., 02-CA-7111 (filed as a class action) and Peter Petersan et al. v. ChartOne, Inc., Case 03-CA-8328 (filed as a representative action under the District of Columbia consumer protection statute). ChartOne denies that it overcharged anyone, but wishes to settle the cases.

Under the terms of the settlement, ChartOne has agreed to pay \$15.00 to patients who requested and paid ChartOne for copies of their own medical records from their health care provider when the charge was in excess of the then applicable rate for medical records set by the Maryland Legislature as set forth in the Annotated Code of Maryland, Health (General) Article, section 4-304 (and with no clerical or preparation fee for patients who requested their records directly rather than through a lawyer on or after April 14, 2003). Going forward, ChartOne has also agreed to reduce the rates it charges persons who request copies of their medical records either (directly or through an attorney) to no more than (a) the applicable rate for medical records set forth in the Ann. Code of Md., Health (General) § 4-304, or (b) by federal regulations at Title 45 of the Code of Federal Regulations, section 164.524 if the patient requests the records directly (*i.e.*, not through a lawyer). ChartOne has also agreed under the settlement agreement to pay the costs of mailing notice and paying claims, pay the three representative plaintiffs \$2,000 each, pay plaintiffs’ attorneys legal fees of \$219,000, and pay half the cost of administering the claims process.

As a potential class member, in addition to other legal rights you may have in this case, you may: (1) mail the attached claim form and any required documents to [address] post-marked on or before [date] for a \$15.00 refund or (2) “opt-out” of the class and the settlement by mailing a statement saying you wish to “opt-out” of the settlement to [address] post-marked before [date]. The Judgment, whether favorable or not, will include all class members who do “opt out”. Any class member who does not “opt out” may, if desired, enter an appearance through a separate attorney of his or her choosing. Class members who file a claim or do nothing will be bound by the terms of the settlement and will not be able to bring separate lawsuits for any alleged overcharges by ChartOne between August 7, 1999 and the date this case is terminated. Class members who opt out will not be bound by the terms of the settlement, will not be eligible to receive \$15.00, and will not be entitled to object to the settlement or to appear and be heard at the fairness hearing. Class members wishing to object to some or all of the terms of the settlement must file their objections in the Office of the Clerk, District of Columbia Superior Court, 500 Indiana Ave., N.W., Washington, D.C. 20001 and serve copies on the lawyers in the case listed below post-marked on or before [date].

A settlement hearing will be held before the Court on \_\_\_\_\_, in Courtroom No. A50 at the District of Columbia Superior Court, (or at such adjourned times and dates as the Court may direct without further notice) to determine whether the proposed settlement should be approved. You need not attend the settlement hearing unless you object to some or all of the terms of the settlement.

The settlement documents and other documents filed in the case can be viewed at the Office of the Clerk, District of Columbia Superior Court, 500 Indiana Ave., N.W., Washington, D.C. 20001 during normal court hours and the settlement documents are available online at [www.\\_\\_\\_\\_\\_](http://www._____).

<u>Attorneys for the Plaintiffs</u> William Claiborne • 717 D St. NW • Ste. 210	<u>Attorneys for ChartOne</u> John T. Hugo • Cooley Manion Jones LLP
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Washington, DC 20004	21 Custom House Street • Boston, MA 02110
Sean R. Day • 8505 Baltimore Ave. • Ste. B College Park, MD 20740	Jonathan L. Abram • Hogan & Hartson 555 Thirteenth Street NW • Washington, D.C., 20004

**CLAIM FORM**  
**Ford v. ChartOne, 02-CA-7111**

**This Claim Form and any supporting documents (described below) must be mailed to the Claims Administrator:**

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

**Your Claim Form and any supporting documents must be postmarked by [Date]**

*Please Type or Print*

Patient's Name \_\_\_\_\_ Patient's Date of Birth:

\_\_\_\_\_

Your Name (If Different) \_\_\_\_\_ Relationship to Patient

\_\_\_\_\_

Your Address

\_\_\_\_\_

Your Telephone Number

\_\_\_\_\_

DC medical provider from whom records were requested (if known):

\_\_\_\_\_

Date of the request or ChartOne invoice (if known): \_\_\_\_\_ Amount Paid (if known):

\_\_\_\_\_

If you requested your records through a lawyer, you must enclose documentation showing that you personally bore the cost of the records. This may include a copy of a check showing that you paid for the records directly, or that you paid the attorney for the records, or a copy of a disbursement sheet showing that the cost of the medical records was deducted from a gross settlement or litigation proceeds.

If you are making a claim for a person for whom you hold a health care power of attorney, or for whom you are entitled to manage assets, you must enclose a copy of documentation evidencing such authority on behalf of the patient or his/her estate.

By submitting this Claim Form, I declare under penalty of perjury under the laws of the District of Columbia that the information contained in this Claim Form is true and correct to the best of my knowledge and that I believe in good faith that I am a member of the settlement class as defined in the class notice and I agree that, if the settlement is approved, all of the settled claims will be released.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT A-1**

[date]

Re: Ford v. Chartone, Inc.  
Superior Court of the District of Columbia, Case No. 02-7111  
Class Action Settlement

Dear Counsel:

You are receiving this letter because ChartOne's records indicate that you or your firm requested copies of medical records from a D.C. health care facility on behalf of one or more clients for which you were billed by ChartOne on or after August 7, 1999. Under a class action settlement, your client may be eligible to receive \$15.00 from ChartOne. Going forward, ChartOne has also agreed to reduce the rates it charges persons who request, through an attorney, copies of their medical records from a D.C. facility to no more than the applicable rate for medical records set forth in Ann. Code of Md., Health -- General § 4-304. Other terms of the settlement are summarized in the attached copies of the notice and claim form.

Copies of the notice(s) and claim form(s) for the client(s) listed below are enclosed so that they may be forwarded to the client(s). Thank you.

<u>Patient</u>	<u>Facility</u>	<u>Date of Invoice</u>	<u>Amount</u>
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