

UNITED STATES COURT OF APPEALS  
FOR  
THE SIXTH CIRCUIT

FRANCIS J. SAVARIRAYAN, M.D. ) Appeal Brief  
Appellant/Plaintiff, a Veteran Commanding )  
Officer of the USAF )

RECEIVED  
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LEONARD GREEN, Clerk

) Case No.: Case No: 10-5286  
Originating Case No.: 2: 07-CV-00055

v.

)  
)  
) JURY TRIAL DEMANDED

WHITE COMMUNITY HOSPITAL, COMM-  
UNITY HEALTH SYSTEMS, INC.,  
Hospital, MR. GARY NEWSOME, PRESIDENT, COMM-  
UNITY HEALTH SYSTEMS, CHAD GRIFFIN MD., )  
DANIEL BARNETT MD., of BLUE CROSS BLUE )  
SHIELD OF TENNESSEE, BLUE CROSS BLUE )  
SHIELD OF TENNESSEE, J.W. Allen JD, attorney,  
Appellees/ Defendants.

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APPEAL BRIEF

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Exhibit A

**FRAP 28 Briefs**

(a) **Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:

- (1) a corporate disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
  - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (B) the basis for the Court of Appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal or petition for review;and  
63
- (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis;
- (5) a statement of the issues presented for review;
- (6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
- (7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));
- (8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
- (9) the argument, which must contain:
  - (A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (10) a short conclusion stating the precise relief sought; and
- (11) the certificate of compliance, if required by Rule 32(a)(7).

(b) **Appellee's Brief.** The appellee's brief must conform to the requirements of Rule 28(a)(1)–(9) and (11), except that none of the following need appear unless the appellee is

dissatisfied with the appellant's statement:

- (1) the jurisdictional statement;
- (2) the statement of the issues;
- (3) the statement of the case;
- (4) the statement of the facts; and
- (5) the statement of the standard of review.



the simplified briefing form which is enclosed. It is very important to mail your brief and serve opposing counsel by the deadline. Under the appellate rules, the mailing date is also the filing date and if the brief is filed late, the case is at risk of being dismissed for want of prosecution.

Appellant's Brief

1 signed original  
Limit of 30 pages or 14,000 words  
Mailed by **May 17, 2010**

The Court has ceased its use of the electronic Record on Appeal (ROA). In lieu of the ROA, the Court will access directly the electronic record in the district court. To assist the Court, the appellee must include in an addendum in the principal brief, a designation of relevant district court documents, identifying each document by record entry number and a succinct description.

If any relevant documents are not available electronically, the appellee must file an electronic appendix with the briefs. To determine if this appeal requires an appendix and how to prepare it, appellee counsel is strongly encouraged to read the latest version of the Sixth Circuit Rules at [www.ca6.uscourts.gov](http://www.ca6.uscourts.gov), in particular Rules 28 and 30.

Appellee's Brief  
Appendix (if required by 6th Cir. R. 30(a)  
and (c)(2))

Filed electronically by **June 17, 2010**

Appellant's Reply Brief  
(Optional Brief)

1 signed original  
Limit of 15 pages of 7,000 words  
Mailed 17 days after the appellee's brief

If you still have questions after reviewing the information on the web site, please contact the Clerk's office before you file your brief.

Sincerely yours,

s/Mary C. Patterson  
Case Manager  
Direct Dial No. ~~513-564-7033~~  
Fax No. 513-564-7094

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564-7014

UNITED STATES COURT OF APPEALS  
FOR  
THE SIXTH CIRCUIT

FRANCIS J. SAVARIRAYAN, M.D. ) **Appeal Brief**  
Appellant/Plaintiff, a Veteran Commanding )  
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) **Case No.: Case No: 10-5286**  
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WHITE COMMUNITY HOSPITAL, COMM-  
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DANIEL BARNETT MD., of BLUE CROSS BLUE )  
SHIELD OF TENNESSEE, BLUE CROSS BLUE )  
SHIELD OF TENNESSEE, J.W. Allen JD, attorney,  
Appellees/ Defendants.

---

COMES NOW the Plaintiff, Francis J. Savarirayan MD., Pro Se, and pursuant to FRAP rules 28, 30 and other applicable rules of FRAP, local rules, Common Law, the US Constitution- the Supreme Law of the US, which supersedes any Supreme Court opinions-past. present or future,

**Preamble:** The filing in the US District Court for the Middle District of TN, by Savarirayan in August 24, 2007 was proper since all the litigants were residents in the State of Tennessee. (Refer: , Document #1, of Originating Case # 2:07-00055)-filed also as Document D of Appellant's Notice and Motion filed on 5/13/2010) with this Court.

Counter Claim filed by the Appellees with the Nashville Federal Trial Court in 2009 after its Final Order, when the Plaintiff/Counter Defendant was a registered voter and resident in the State of Illinois since 2007 is improper. Proof of Residency in the form of Photocopies of the Illiois Voter Registration card, Apartment Lease were previously submitted to the trial Court. Appellant is not sure if these exhibits were also destroyed by the trial court. If these are missing, the Appellant may be notified by email so that this proof can be resubmitted to the Court of Appeals. Appellant is also available for a hearing through a telephone conference

call after reasonable notice. His Telephone number for Conference Call is 312-912-8534. For all other calls he may be contacted at 931-544-0077. For above reason the Counter claim against Savarirayan should be dismissed for lack of jurisdiction. Appeal jurisdiction for Savarirayan rests with the 7<sup>th</sup>.Circuit, US Court of Appeals.

( History of the Cause of action up to the time the Federal Complaint was filed with the Federal Court in Nashville.):

1. In Mid October 2002, the Plaintiff was invited for an interview by the White County Hospital through its CEO, Mr. Mark Cain. This interview occurred on or about Friday, October 11<sup>th</sup>. 2002.He also met with members of the Medical Staff who enthusiastically invited him to join the staff and start his practice of Urology in Sparta, TN in White County. The Contract of Financial guarantee was signed on 11/12/02 by Mr. Garry Newsome on behalf of Sparta Hospital Corporation, d/b/a/ as White County Community Hospital (Exhibit #3 of Complaint.)
2. Since the Hospital's marketing of my practice was in my opinion sub-standard, I took over the marketing of my practice with measurable results. **There was a 600% increase** in the Urological surgery performed, as compared to the previous year, when Urology services were performed by another Urologist.(Exhibit#5,&5A of the Complaint.) These data were generated by the White Community Hospital and is in their possession.
3. The administration did not show any enthusiasm in developing my practice and even failed to purchase a basic Urology equipment- a ureteroscope, which was approved by the OR Committee, the Nursing committee and the Director of nursing Mrs. McDonald. Mr.Caine over ruled its purchase, stating dire financial situation, which according to him was near the 'red line'. However later on the Plaintiff found out that the hospital made a profit in excess of \$2 Million (Exhibit# 6 of the Complaint.)
4. Towards the end of 2003, the hospital on 3 occasions, delayed beyond 10 days the payment of plaintiff's income guarantee, thus breaching its contract. Along with this Mr. Cain sent letters to Dr.Savarirayan to correct NON EXISTING deficiencies. When he called Mr. Cain, he said he received information from a different source, which he agreed was erroneous, and asked him to forget about it and not to worry. ("Document #112-filed on 9/26/08")
5. In 2003 when Blue cross arbitrarily denied Dr.Savarirayan's participation, so that his bills for services performed on patients insured with Blue Cross Blue Shield (BCBS) were not paid. However BCBS allowed participation of another physician affiliating with White Community Hospital, who a few weeks ago settled a Malpractice suit against him for over &1 Million. (Please see enclosed exhibits and also Exhibits #9 & 10 of the complaint.) Thus the highest qualified physician, Dr.Savarirayan who is Boston University trained, Board certified and with excellent credentials including past academic affiliation was denied participation, by its Credentialing Chairman, Dr Barnett. When one strips Dr.Barnett of his title, it will be noted that he is a general practitioner with minimal qualification and no hospital privileges.TN Board of Medicine's Physician data on physicians-Exhibits D1 to D4 will show that Physicians who were not Board certified as well as those who were subjected to large Malpractice awards were allowed to participate, while it disallowed participation to the highest qualified physician, in this sample, with no Malpractice awards- the Plaintiff.

6. This act of the BCBS is all the more sinister, since a few weeks prior his credentials were reviewed and unanimously approved, as Urologist & Urologic Surgeon, at the White Community Hospital, by about half a dozen Board certified physicians of the Credentials & the Executive Committees of that hospital, all of whom had higher credentials than Dr. Barnett . One of these physicians is a Board certified Surgical specialist and was also the Chief of Surgery at the hospital.
7. The BCBS alleges the report in the National Practitioner Data Bank (NPDB), by a 20 bed hospital was the main reason for its denial of my participation. All the facts mentioned hereunder were submitted to BCBS including the Chief of Staff's letter from Box Butte General Hospital (Exhibit#30 of the Amended Complaint.). It stated that DR.Savarirayan left the Hospital during the pendency of investigations against him for two instances of Malpractice. As the TN Board of Medicine's physician data would show there is no Malpractice report against Dr.Savarirayan in over 20 years of his practice.
8. The first half of the statement is true since; I left this 20 bed rural hospital, the Box Butte General Hospital to take up my appointment as Chief of Urology at a 710 bed teaching hospital in Tuskegee Alabama with Medical School affiliation. (Ref my CV-Exhibit#1 of Complaint)
9. This irked some White ethnic Physicians, who were graduates of American Medical Schools, at the Box Butte Hospital-a 15 bed rural hospital, who with 'keying mentality', initiated a sham investigation about 2 months after I left that hospital, and being a hospital entity through a special loophole in the law they were able to place this half truth in the NPDB records and not be held liable. The fact that there was 'No final findings by the Medical Executive committee' was noted by its then Chief of Staff, Dr.Wallace and included in the Amended Complaint filed with this Court as Exhibit#30 of the Amended Complaint)  
This information was provided to the Credentials Committees of both, the Blue Cross Blue Shield and the White Community Hospitals.
10. These actions of Blue Cross Blue Shield were brought to the attention of Mr. Cain by DR.Savarirayan and asked that the Hospital attorneys intervene on my behalf and on behalf of the hospital. Mr.Cain refused to provide legal help and advised me to seek legal help on my own. He also said that if the hospital took any action against Blue Cross Blue Shield, it will more than likely cut all payments to the hospital also in which event the hospital will close. Initially I thought Mr. Cain was joking. Since then events that occurred have confirmed to me that Mr. Cain was serious.
11. Soon there after Mr. Cain sent his fabricated letter of my practice deficiencies and his Settlement agreement both dated 1/16/2004. (Exhibit #1 & 2 of my Motion to Dismiss the Motion for Summary Judgment filed by the White Community Hospital filed with my Federal Appeal Motion to the District judge(Filing #112) I was given less than 24 hours to accept or have my entire wages paid upto that time garnished, thus making me a slave since joining the hospital- which is prohibited by the XIII Amendment to the US Constitution.
12. After funds were capriciously cut off by the hospital, & Blue cross Blue shield, then physicians like Dr. Griffin, without fear of reprisals by the hospital as required by the Hospital By -Laws, started discharging patients admitted under Dr.Savarirayan's service and having the procedure done by a less qualified Urologist in a neighboring town, which effectively closed Dr..Savarirayan's practice.
13. Hence, he was forced to initiate a suit to recover his losses. Later he found out that his attorney Mr. JW Allen who signed a contract to represent him in good faith and



- without malice,(Exhibit #15 &16 of the Federal Amended Complaint) filed a Motion for Non suit with prejudice without his Client's knowledge, though the contract stipulates that the suit shall not be dismissed without the written authorization of his Client. This was later reinstated through Savarirayan's Pro SE filings.
14. Hence to preserve his Federal Claims of Discrimination, Civil right's violation, Anti-trust etc., Savarirayan filed a Federal Complaint and then an Amended Federal Complaint
  15. Later Savarirayan filed a Motion for Non Suit without prejudice, which was granted except for the four defendants who have filed dispositive motions.
  16. The case in the White County is currently pending, and the Hamilton case which was filed against him by Blue Cross Blue Shield is being appealed by Dr.Savarirayan.. Dr.Savarirayan report on the Credentialing practices of BCBS to the National Practitioner Data Bank (NPDB), located in Chantilly ,VA which investigated this and found it to be valid and cautionary report was placed against Dr. Barnett.(Complaint-Document filing# 89, Exhibit II a (total of three pages, Resubmitted as R-II a.).Please note in **Exhibit filing #89, Iia, Page 3, Dr. Barnett has indicated that he has not disputed this report.**
  17. Moreover, when BCBS filed a suit against the Plaintiff in Hamilton County, for the NPDB report, which is a Federal entity report- located in the State of Virginia-it had no Venue or Jurisdiction except the fact that the presiding Judge in the Hamilton Court hearing their case against Dr.Savarirayan has been the recipient of large sums of money from the Law firm of Miller & Martin, the law firm representing BCBS (**Ref: Document filing # 88 of Plaintiff's Federal case with the Nashville Federal Trial Court, TN.**
  18. In retrospect the Plaintiff feels that Mr. Garry Newsome's desire in hiring Dr. .Savarirayan from the beginning was to garnish part or all of his income guarantee, through his subordinates like Mr. Mark Cain. Mr. Newsome had total control of the White County Hospital's finances. The hospital at that period did not have any authority to purchase items over \$1000-/ or enter into any contract over \$1000-/ without his approval.
  19. Hence Savarirayan's Release which was signed by Mr. Cain, was done with the full knowledge and approval of Mr. Newsome. It is for the jury to assess the levels of co-liability of these individuals.
  20. Plaintiff will also show through testimony of other physicians in the Community Health Systems, that their contracts were also garnished by Mr. Newsome.
  21. This enabled Mr. Newsome to give himself in one year alone, salary and bonuses in excess of **3.78 Million Dollars (Federal Complaint-Exhibit#2)**, which is more than 10 times the salary of the US President.  
Rule 56 of the FRCP specifically prohibits the granting of summary judgments involving state of mind such as bad faith, conspiracy, fraud, and seldom granted in questions involving employment actions, discrimination and antitrust cases.(Ref: Peterson v. Scott County, 406 F. 3d 515, 521 (8<sup>th</sup>. Cir. 2005))
  31. In retrospect, the chronology of events makes the Plaintiff conclude, that the act of defrauding and robbing him of his funds was initiated by Mr. Newsome. Then Blue Cross Blue Shield and Dr. Griffin joined in on the kill to destroy Dr Savarirayan's

practice, which in the end they succeeded.

**Other acts of Fraud by the Defendants/Counter Plaintiffs and the Trial Court in Nashville, TN:**

Settlement Agreement, which was flawed and submitted with fraudulent intent. The defendants never submitted this Document as evidence.

Appellant/Plaintiff's efforts to submit the Hospital's Settlement agreement, Exhibit C, Mr. Cain's letter (Exhibit D) setting forth the reason as evidence along with exhibit 5A were thwarted by the Federal Trial Court.

25. The Federal Trial Court also blocked all discovery and Interrogatories submitted to the White Community Hospital Please Refer to Federal Court Docket entry #52 & #65.

26. The magistrate judge's Order blocking discovery is contrary to FRCP rules and also prior Supreme Court ruling well expounded in Plaintiff's **Federal Court Filings #112 & Brief, entry#113.**

Appellant has referred these unlawful acts of the Nashville Federal Court Judges, to the Senate Judiciary Committee and the FBI-Central Office in Washington, DC.

27. **Frivolous Summary Judgment Motions:** These summary judgment Motions filed by the Defendant/s are frivolous and only a court in improper liaison with the Defendants/s would have granted them. As proof Appellant submits to the Court Dr. **Chad Griffin's Filings** for Summary Judgment-Documents #s **42,43,44 & 46** with Affidavit, and Appellant's/ Plaintiff's Response, Federal Ct Document #s **102,106,103,104, and 105.** These documents would also show that Dr. Griffin has committed perjury through his affidavit.

28. These documents were reviewed by about 6 AV rated attorneys and a Law School professor, who were unanimous in their opinion that summary judgments should not have been granted.

29. **Exhibit A-Item#4:** False- Did not contain the same causes but several additional causes and counts of Federal Law and US Constitutional violations

30. Though the Veteran Plaintiff's case was filed through random selection under Judge Maddux, about 2 months later, Dr. Griffin filed a Motion, stating no reasons, to transfer my case to the Docket of Judge Turnbull, (Exhibit #19 & 19a of Federal Complaint.) Though this was vehemently objected to by my then attorney Mr. Allen, without a hearing the case was transferred to Judge Turnbull's Docket. Judge Turnbull or some one as per his instructions 'went back in time' and changed the Docket entries to falsely indicate that the case was first filed under Judge Turnbull. Apparently Judge Maddux does not practice Justice for Hire. One need not be a Harvard Law student to know that this is fraud by the court. The Plaintiff has made a complaint to the TBI and the FBI regarding this Judge's actions.

31. The Defendant/s base their entire argument to Dismiss the Federal Suit against them under the doctrine of Resjudicata (**Ref P112 of Federal Rules of Civil Procedure, 9<sup>th</sup> Edition-a Copy of this volume is in the possession of the Appellant.**)

Before a Claim of Res Judicata the following three elements **must be present:**

1. Identical claims or occurrence: Which is not the case here.
2. Identical parties : Which also is not the case here. Six additional defendants were included in the Federal case.

3. Final judgment on the Merits after jury review: Only a compromised or biased court would conclude judgment was issued on the merits. The state court trial judges being convinced as the Federal trial judges in Nashville, that if the case went before a jury the Defendants, who are Politically powerful and cash heavy with their PACs would be found liable on all counts, and allowed them to escape being held accountable by granting them Summary Judgments.

**Summary judgments are not intended to let the guilty walk free.**

Most damaging to the defendants is the observation in the FRCP that cases that have not gone through a jury should not be considered as judgment "ON the Merits"

Hence Appellant moves that all references to 'Res Judicata be stricken since they are without merit.

### CONCLUSION

For the reasons noted above, Appellant **moves:**

- 1: Appellees claims against Savarirayan be dismissed for lack of jurisdiction.
2. Savarirayan's Claims against the Appellees were proper and were unlawfully prevented from going before a jury by the Nashville Trial Court which is in liaison with the Defendants/Appellees. In the interest of fairness and untainted justice, the case be referred back for jury review to a Federal trial court of competent jurisdiction, which would be the Federal Court for the Northern District of Illinois, in Chicago, IL

This will be of no hardship to the Appellees, since Blue Cross Blue Shield has several office in Illinois, including Chicago. The Hospital defendants and physicians have their representative organizations, the American Medical Association and the American Hospital Associations, have offices in Illinois. Unlike the Appellant, the Appellees Legal expenses are fully covered by their Malpractice Insurers.

In making this appeal, the Appellant relies on the entire Court records, part of which was submitted as Exhibit A of his Appellate Court filing of 5/13/2010, the US constitution, particularly Amendment VII and Article V of the US Constitution, FRCP rules, FRAP rules, prior Supreme Court Decisions, all of which have been referenced above in this Appeal Brief and Black's Law Dictionary.

Respectfully submitted

  
**FRANCIS J. SAVARIRAYAN**

.Appellant

By: **FRANCIS J. SAVARIRAYAN**  


Pro Se & Attorney-in-Fact  
P.O. Box 67  
Plainfield, IL 60544  
Oswego, IL 60543  
931-544-0077 or 312-912-8534 (for Conference Calls Only)

**Certificate of Service**

I hereby certify that a true copy of the foregoing has been furnished, by U.S. Mail, next day delivery, postage prepaid and properly addressed, to the following counsels of record and officials, on this 15<sup>d</sup>. day of May 2010.



**FRANCIS J. SAVARIRAYAN, M.D., Pro Se.**

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US President, The White House  
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The Prime Minister  
Government of India  
Rashtra Bhavan, New Delhi  
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John Wayne Allen J.D.  
441 East Broad Street, Suite I  
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The President,  
International College of Surgeons  
Lake Shore Drive, Chicago

The President,  
International Human Rights Commission  
UN, New York

The President & Chief Judge  
World Court  
Netherland

Exhibit "C"

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COOKEVILLE DIVISION**

FRANCIS J. SAVARIRAYAN, M.D.,

Plaintiff,

v.

WHITE COUNTY COMMUNITY HOSPITAL,  
et al.,

Defendants.

No. 2:07-00055  
JUDGE HAYNES

**ORDER**

Before the Court is the Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D.'s (the "BlueCross Defendants") motion for summary judgment (Docket Entry No. 202) and the Defendants White County Community Hospital's, Community Health Systems, Inc.'s and Gary Newsome's (the "Hospital Defendants") motion for summary judgment (Docket Entry No. 195). To date, Plaintiff has not responded to either motion.

Plaintiff, Francis J. Savarirayan, M.D., entered into a Recruitment Agreement with Sparta Hospital Corporation, d/b/a White County Community Hospital ("WCCH") on or at out October 31, 2002. After a period of disagreements, WCCH and the Plaintiff executed a "Settlement Agreement and Release of All Claims" (the "Settlement Agreement"), in which the Plaintiff released any and all claims, including future claims, against WCCH and its related entities arising out of the Recruitment Agreement. In consideration for this Settlement Agreement, WCCH released its right to pursue repayment of \$260,789.44 in salary paid to the Plaintiff.

Despite this Settlement Agreement, Plaintiff filed this action for breach of contract,

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Protection Act, violations of 42 U.S.C. § 1981, violations of the Racketeer Influenced Corrupt Organizations (RICO) Act, and violations of the Clayton Act. Plaintiff's claims are those that Plaintiff specifically released under the Settlement Agreement.

On February 10, 2009, this Court dismissed the Plaintiff's action with prejudice after concluding that (1) the Plaintiff's claims were barred by res judicata, (2) the Plaintiff failed to procedurally and substantively create a *genuine issue of material fact*, and (3) the Settlement Agreement precluded the Plaintiff from pursuing claims against the Hospital Defendants and BlueCross Defendants (Docket Entry No. 152).

The only remaining claims are the Defendants' counterclaims for Plaintiff's breach of the Settlement Agreement, damages associated with that breach, including their applicable legal fees, costs, and expenses. The Hospital Defendants moved for summary judgment of the Plaintiff's claims for which the Plaintiff was precluded from asserting under the express terms of the Settlement Agreement. The Court granted summary judgment in favor of the Hospital Defendants after concluding, in relevant part, that (1) the Plaintiff failed to procedurally and substantively create a *genuine issue of material fact*, and (2) the Settlement Agreement precluded the Plaintiff from pursuing claims against the Hospital Defendants. This ruling is dispositive of the Hospital Defendants' counterclaims and the Hospital Defendants are entitled to judgment as a matter of law.

The Settlement Agreement presents a contract claim governed by Tennessee law. Absent fraud, misrepresentation or duress, the Plaintiff's release is binding. Evans v. Tillet Bros. Const. Co., Inc., 545 S.W.2d 8, 11 (Tenn. Ct. App. 1976) (perm. app. denied) (quoting Akard v.

and 42 U.S.C. § 1988, the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-109(e), authorizes the Court to require a plaintiff to indemnify a defendant for any damages incurred, including reasonable attorney's fees and costs, "upon finding that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment." Under 42 U.S.C. § 1988, the Court may award a defendant reasonable attorney's fees as part of the costs if a plaintiff's action was frivolous, unreasonable, or without foundation. See also Hume v. Sterling, 79 F.3d 1148, 1996 WL 116828 at \*2 (6th Cir. 1996).

Given the Court's prior grant of summary judgment in favor of the Hospital Defendants, the Court concludes that Plaintiff's claims were frivolous, without foundation, and without legal or factual merit given that he had contractually agreed to release all such claims. Thus, the Hospital Defendants should be awarded their legal fees, costs, and expenses under 42 U.S.C. § 1988 and Tenn. Code Ann. § 47-18-109(e)(2).

As to the Hospital Defendants' counterclaims for Plaintiff's breach of the Settlement Agreement, damages associated with that breach, and damages associated with the Plaintiff's frivolous claims, given the Court's earlier ruling that the Plaintiff breached the Settlement Agreement, the Hospital Defendants are **AWARDED** to \$260,789.44 (plus prejudgment interest) for the stated consideration paid to the Plaintiff for his execution of the Settlement Agreement.

Based upon the affidavit of Brian Cummings, the Hospital Defendants are also **AWARDED** \$38,618.42 for the attorney's fees, costs, and expenses incurred as a result of defending the Plaintiff's frivolous claims and pursuing the Hospital Defendants' corresponding

given the Court's ruling on the Defendants' prior motion for summary judgment. Similarly, these Defendants are also entitled to damages pursuant to Tenn. Code Ann. § 47-18-109(e)(2) and 42 U.S.C. § 1988 given that Plaintiff's claims against these Defendants were frivolous. The BlueCross Defendants have not submitted an affidavit regarding their attorney's fees and costs, and the Court will enter an award for those fees upon their submission of such an affidavit.

For the reasons stated above, Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D.'s motion for summary judgment (Docket Entry No. 202) and the Defendants White County Community Hospital and the Defendants White County Community Hospital's, Community Health Systems, Inc.'s and Gary Newsome's motion for summary judgment (Docket Entry No. 195) are GRANTED. Defendant White County Community Hospital's motion for judgment on the pleadings (Docket Entry No. 189) is DENIED as moot. Defendant White County Community Hospital, Community Health Systems, Inc., and Gary Newsome are AWARDED \$299,407.86 for Plaintiff's breach of the Settlement Agreement, attorney's fees, costs and expenses incurred as a result of Plaintiff's filing this action. The award of attorney's fees for Defendants BlueCross BlueShield of Tennessee, Inc.'s and Daniel Barnett, M.D. is reserved.

It is so ORDERED.

ENTERED this the 11<sup>th</sup> day of February, 2010.

  
WILLIAM J. HAYNES, JR.  
United States District Judge



< Sent by U.S.P.S - NEXT DAY DELIVERY. >

From: 5/15/2010.

Francis Savarimanon Lt. Col. Ret., U.S. Major USAF.

P.O. Box 67.

CASE# 10-5286.

RECEIVED IL 60544.

(Original Case# 2:07-CV-00055)

MAY 17 2010

LEONARD GREEN, Clerk  
Leland Green, Clerk -

U.S. Court of Appeals for the  
6th Circuit,  
540 Potter Street Ct. House,  
100 East 5th Street.

Cincinnati, OH. 45202.

Dear Mr. GREEN,

Please find enclosed an Appellant's Appeal  
Brief with table of contents, and Exhibits and  
Certificate of Service for Filing. Thank you.

Very truly yours,



Francis J. SAVARIMANON.

Tel: 931-544-0077.

Email: savarimay@aol.com.

F. Savarirayan M.D. Ex-Major, USAF/R  
 P.O. Box 67  
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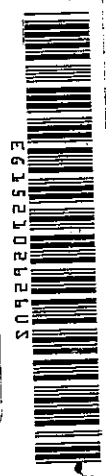
Mr. Leonard Green, Clerk  
 US Court of Appeals for the Sixth Circuit,  
 540 Potter Stewart Court House  
 100 East 5th Street,  
 Cincinnati, OH 45202

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