

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

MARK GODIKSEN, MD,)
A California Sole Proprietor,)
)
Plaintiff,)
)
v.)
)
GREENWAY HEALTH, LLC,)
A Delaware Limited Liability Company)
And)
GREENWAY HEALTH, INC.,)
A Delaware Corporation,)
)
Defendants.)
_____)

CIVIL ACTION NUMBER:

CLASS ACTION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Mark Godiksen, MD (“Plaintiff” or “Godiksen MD”), individually and on behalf of all others similarly situated, file this Class Action Complaint against Greenway Health, LLC and Greenway Health, Inc. (collectively “Greenway” or “Defendants”) and respectfully assert the following:

I. INTRODUCTION

1. Plaintiff is an internal medicine physician and is in the business of providing healthcare to patients. Like many healthcare providers, Plaintiff desired to

streamline his medical billing by acquiring a system that would simplify billing and alleviate administrative burdens.

2. Plaintiff contracted with and paid hundreds of thousands of dollars to Greenway for revenue services software including Prime Suite and GRS Select (collectively “Greenway’s Software”), support services, and project management services related to that software.

3. To induce Plaintiff and other healthcare providers to use Greenway’s Software and pay artificially high prices, Greenway represented that Greenway’s Software would take over the process of interpreting medical notes and treatment, billing, and collections to third party insurance companies, including Medicaid and Medicare. To this day, Greenway advertises on its website that Greenway’s Software is 98% accurate.

4. Contrary to Greenway’s advertisements, however, Greenway’s Software is not accurate. Greenway’s Software systematically misinterprets quantities, doses, and volume of treatment for even the most basic service resulting in high rates of denials or drastic reduction in payment for providers such as Plaintiff.

5. To make matters worse, when providers, such as Plaintiff, follow up regarding outstanding accounts receivable balances, Greenway is not able to identify where the issue originated nor remedy the problem because Greenway’s Software

and Greenway's "certified" project managers are incapable of matching outstanding accounts receivable ("A/R") with the erroneous invoices.

6. Insurance companies, including Medicaid and Medicare, have strict guidelines regarding timely and accurate submission of billing. Greenway's submission of non-compliant and nonsensical billing resulted in significant financial harm to providers that have paid tens or hundreds of thousands of dollars for Greenway's Software.

II. PARTIES

7. Plaintiff Mark Godiksen, MD is a sole proprietor organized under the laws of California with its primary place of business in California.

8. Defendant Greenway Health, LLC is a Delaware Limited Liability Company with its principal place of business at 4301 W. Boy Scout Blvd., Suite 800, Tampa, FL 33607.

9. Greenway Health, Inc. is a Delaware Corporation and an affiliate of Greenway Health, LLC.

10. Greenway Health, Inc. and Greenway Health, LLC (referred to collectively as "Greenway") both provide software and services relating to Electronic Health Records ("EHR"). Greenway Health, Inc.'s and Greenway Health, LLC's customers are typically healthcare providers.

III. JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because the amount in controversy exceeds \$5,000,000 and because Greenway resides in Florida and Plaintiff resides in California.

12. Upon information and belief, and pursuant to 20 USC § 1332(d)(5)(B), there are more than 100 members of the proposed class.

13. The Court has personal jurisdiction based on the forum selection clauses in Greenway's contract with Plaintiff.

14. Venue is also proper based on the forum selection clauses in Greenway's contracts with Plaintiffs, referred to in the preceding paragraph.

IV. FACTS COMMON TO ALL COUNTS AND PARITES

15. Healthcare facilities, like any business, are responsible for securing payment for their services. However, the process of obtaining payment from an insurance company for healthcare services rendered to an insured patients can be complicated.

16. According to Greenway, Greenway's Software is a technology-based solution to submitting billing for healthcare services to insurance companies. According to Greenway, Greenway Software will simplify billing and alleviate administrative burdens.

17. A key aspect of Greenway's Software is that it purports to import physician notes, often called progress notes, and complete the necessary billing as a part of its digestion. If medical billing is done improperly, the submission may be rejected or the amount paid may be far less.

18. When Greenway's Software is digesting a provider's progress notes there are key fields that Greenway's Software is tasked with interpreting, including treatment, an amount of medication, or procedure type to name a few. Although the treatment provided may vary based on discipline, it is common for the treatment to include specific names of medications, measurements of the dosage, and procedures performed.

19. Greenway holds itself out to be an expert in the following disciplines¹:
- a. Ambulatory Care Clinic
 - b. Billing Service
 - c. Cardiology
 - d. Community Health Center
 - e. Family / General Practice
 - f. Federally Qualified Health Center (FQHC)

¹ <https://www.greenwayhealth.com/specialties>

- g. Gastroenterology
- h. Independent / Group Practice
- i. Independent Practice Association (IPA)
- j. Internal Medicine

20. Greenway holds itself out to be an expert in the field of medical coding and billing, and touts the Greenway's Software is knowledgeable and accurate. However, Greenway's Software is incapable of interpreting quantities accurately resulting complete denial of billing or only a fraction of the true amount being paid.

A. Greenway's Contract with Plaintiff

21. On August 1, 2014, Plaintiff entered into a contract with Greenway to utilize Greenway's Software and related services for revenue cycle management. A copy of the contract between Plaintiff and Greenway is attached as **Exhibit A**.

22. Upon information and belief, Greenway utilizes form agreements that are substantially similar to the one contained in Exhibit A.

23. Upon information and belief, Greenway's form contracts contain a Georgia choice-of-law provision.

24. Upon information and belief, Greenway's form contracts contain a Georgia forum selection clause.

25. Pursuant to the contract, Greenway required Plaintiff to agree that Greenway would be “its exclusive provider of RCM services to bill and collect for the provision of services.” Exhibit A, pg. 15.

26. Greenway agreed to provide the Primesearch tool², which would interface with Plaintiff’s practice to allow Greenway to track Plaintiff’s patients, their check in, insurance, past visits, past charges, and amounts chargeable to the patient and their insurance company. Exhibit A, pg. 11-12.

27. The purported purpose of allowing Greenway’s Software to control and monitor all aspects of patient insurance, check-in, and treatment, is to allow Greenway to also control the billing and revenue cycle.

28. Greenway agreed to provide certain professional services, performed by Greenway’s “Project Managers.” Greenway agreed to be responsible for securing, managing, scheduling, coordinating, and supervising its project management personnel. Exhibit A, pg. 13.

29. According to Greenway, its project managers and staff are “certified” and capable of locating billing inaccuracies and billing errors that can cost a practice.³

² The Primesearch tool was later changed to PrimeSUITE.

³ <https://www.greenwayhealth.com/solutions/revenue-cycle-management>

30. Pursuant to the software license, Greenway warranted that “the Greenway Software . . . will operate in all material respects in conformity with the specifications described.” Exhibit A, pg. 20.

31. In the event Greenway’s Software required support, Greenway agreed to “provide telephonic or electronic help desk [regarding] operation of the Software Services and Subscription services[.]”

32. In exchange for the Greenway’s Software and associated services Plaintiff agreed to pay Greenway \$1,000 per month, plus 6% of the revenue collected. For any given year, the amount paid to Greenway for the Greenway software can exceed \$45,000.00.

33. In exchange, as described in the contract, Greenway’s Software and related services are tasked with overseeing and participating in nearly every administrative aspect of Plaintiff’s practice, most notably the collection and optimization of the revenue cycle.

B. Greenway’s Breaches of the Contract

34. Starting in 2021, Plaintiff began noticing issues with its A/R, most notably, the amount of outstanding A/R was growing and incoming payments were not matching the services rendered.

35. Upon information and belief, around the same time Plaintiff began noticing outstanding A/R, Greenway made the business decision to outsource its “certified” financial care team and part of its project management team to India.

36. Pursuant to the Contract, Plaintiff first raised the concerns regarding outstanding A/R with the electronic help desk that is purportedly capable of identifying medical coding inaccuracies and billing errors.

37. Despite repeated emails and phone calls from Plaintiff, Greenway’s electronic help desk either refused or was incapable of identifying Greenway’s billing errors and inaccuracies.

38. Thereafter, Plaintiff contacted his dedicated Greenway project manager to express concern regarding excessive outstanding A/R. Greenway’s project managers either refused or were incapable of identifying Greenway’s billing errors and inaccuracies.

39. On September 27, 2022—after Plaintiff spent months pouring over Greenway’s medical billing by hand—Plaintiff discovered that a procedure it performs regularly was not being interpreted properly by Greenway’s Software.

40. The photo below depicts an example of a treatment note in a medical record received by Greenway’s Software:

Plan
Orders
○ 2 - GenVisc 850 (20610, J7320)
refill meds
genvisc injected in lateral port of each knee
f/u in 1 week for Genvisc #2 bilateral

41. GenVisc is an injectable medication used for the treatment of osteoarthritis in the knee. As an internal care physician, Plaintiff regularly administers GenVisc. GenVisc is administered in 25 milliliters increments, also referred to as “units.” Therefore, a knee receiving a GenVisc injection receives 25 units every single time and it does not vary.

42. Greenway holds itself out to be an expert in the specialty of internal medicine.

43. In the example treatment note above, Plaintiff noted “2 – GenVisc” and “genvisc injected in the lateral port of each knee.”

44. Rather than interpreting this note as 2 injections of 25 units, Greenway’s Software repeatedly and systematically interpreted and billed this note as 2 units of GenVisc.

45. When Greenway's Software inaccurately interpreted and billed the GenVisc procedure, it ultimately submitted a bill for 1/25th or 4% of the cost of the procedure.

46. Despite months of pleading with Greenway support for answers on the outstanding A/R, Plaintiff was left to spend its own time and money locating Greenway's billing errors and inaccuracies.

47. From 2021 through 2023, Godiksen MD lost over \$75,000 in revenue from Greenway's inaccurate processing of GenVisc procedures alone.

48. After the issue was presented to Greenway, and through the filing of this Class Complaint, Greenway has been unable or unwilling, to remedy the systemic failure of Greenway's Software to interpret quantities correctly.

V. CLASS ALLEGATIONS

49. Plaintiff proposes a class consisting of all people or entities who paid money to Greenway in exchange for Greenway's Software and who suffered damages as a result of the Greenway's Software inaccurate interpretation of quantities, dosage, and volume of procedures (the "Proposed Class").

50. The class period is equal to the statute of limitations for each claim asserted (the "Class Period").

51. Excluded from any of the above proposed class definitions are:

- a. Any executive, officer, employee, consultant, or agent of Greenway;
- b. Greenway and any entities in which Greenway has a controlling interest, or which have a controlling interest in Greenway;
- c. Any entities in which Greenway's officers, directors, or employees are employed;
- d. Any of the legal representatives, heirs, successors, or assigns of Greenway;
- e. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- f. Any of Greenway's outside counsel and their immediate family.

52. According to Greenway, thousands of healthcare providers utilized the Greenway software during the Class Period.

53. Upon information and belief, there are thousands of members of the Proposed Class.

54. The answers to common questions will determine Greenway's liability to all Class Members. Common questions to the proposed class include:

- a. Whether Greenway's Software correctly interprets and bills quantities, dosage, and volume for medical procedures on behalf the Proposed Class;
- b. Whether Greenway's failure to properly interpret and bill quantities, dosage, and volume for medical procedures on behalf of the Proposed Class constitutes a breach of the Contract;
- c. Whether Greenway's failure to provide electronic help desk support for its failure to interpret and bill quantities, dosage, and volume for medical procedures on behalf of the Proposed Class constitutes a breach of the contract;
- d. Whether Greenway's failure to provide project management support for its failure to interpret and bill quantities, dosage, and volume for medical procedures on behalf of the Proposed Class constitutes a breach of the contract; and
- e. Whether Greenway was unjustly enriched by its retention of fees from the Proposed Class because it failed to interpret and bill quantities, dosage, and volume for medical procedures on behalf of the Proposed Class.

55. Plaintiff is a member of the Proposed Class because it paid money to Greenway to purchase, license, or use Greenway's Software.

56. Plaintiff will put the interests of the Class Members on equal footing with his own interests.

57. Plaintiff's counsel are highly experienced class action litigators who are well-prepared to represent the interests of the Class Members.

58. Greenway is a sophisticated party with substantial resources.

59. Prosecution of this litigation is likely to be expensive. In individual proceedings, the damages suffered by Plaintiff and the members of the Proposed Class may not be large enough to offset the costs of litigation.

60. The statute of limitations is tolled because, for the reasons discussed above, Greenway's breaches of contract are ongoing insofar as it continues to collect payment while Greenway's software is inaccurately interpreting and billing quantities, dosage, and volume for medical procedures by the Proposed Class.

61. The statute of limitations is tolled because, for the reasons discussed above, Greenway's unjust enrichment is ongoing insofar as it continues to collect payment while Greenway's Software is inaccurately interpreting and billing quantities, dosage, and volume for medical procedures by the Proposed Class.

62. The discovery rule tolls the statute of limitations. Due to the highly technical nature of the defects in Greenway's software and Greenway's efforts to conceal those defects, health care providers like Plaintiff could not have identified the many defects that give rise to their claims.

**COUNT I – BREACH OF WRITTEN CONTRACT (ON BEHALF OF
PLAINTIFF AND THE PROPOSED CLASS)**

63. As explained in section IV, the Proposed Class entered into contracts with Greenway where Greenway agreed to be the exclusive revenue management software for the Proposed Class.

64. As explained in section IV, Greenway's Software failed and is currently failing to interpret and bill quantities, dosage, and volume for medical procedures on behalf of the Proposed Class.

65. As explained in section IV, Greenway breached and continues to breach the support services agreement by failing to provide an electronic help desk capable of identifying and fixing the billing inaccuracies of Greenway's Software.

66. As explained in section IV, Greenway breached and continues to breach the professional services contract by failing to provide a capable project management professional service capable of identifying and fixing the billing inaccuracies of Greenway's Software.

67. The breaches of contract by Greenway have injured and harmed Plaintiff and the Proposed Class and proximately caused them damages.

68. Plaintiffs and the Proposed Class are entitled to restitution in an amount equal to the fees received by Greenway under the contracts, to recover the damages caused by Greenway's breaches of contract, including but not limited to fees that would have been paid had the Greenway software functioned properly.

COUNT II – UNJUST ENRICHMENT (ON BEHALF OF PLAINTIFF AND THE PROPOSED CLASS)

69. This claim is pled in the alternative to claims for breach of written contract.

70. Plaintiff and the Proposed Class conferred a benefit on Greenway by paying Greenway money for Greenway's Software, which Greenway represented was capable of interpreting and billing quantities, dosage, and volume for medical procedures on behalf of the Proposed Class.

71. Greenway's Software failed to accurately interpret quantities and submit accurate billing resulting in severe underpayment for certain services and non-payment of others.

72. Plaintiff and the Proposed Class conferred a benefit on Greenway by paying Greenway money for Greenway's software support including the electronic help desk.

73. Greenway failed to provide an adequate help desk.

74. Plaintiff and the Proposed Class conferred a benefit on Greenway by paying Greenway money for Greenway's professional services including project management services.

75. Greenway failed to provide adequate professional services.

76. Greenway has been enriched at the expense of and to the detriment of Plaintiff and the Proposed Class in the form of fees they received.

77. Under the circumstances alleged herein, it is against equity and good conscious for Greenway to retain fees paid by Plaintiff and the Proposed Class.

78. Plaintiff and the proposed class are entitled to restitution of the subscription and/or license and/or support and/or other fees they paid to Greenway.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Proposed Class seek the following forms of relief:

- a. An order certifying the Proposed Class under Fed. R. Civ. P. 23(a), appointing Plaintiff and their counsel to represent the Class; and for notice to the Class to be paid by Greenway;
- b. Actual damages suffered by Plaintiff and the Proposed Class;

- c. Restitution to Plaintiff and the Class of all monies wrongfully obtained by Greenway;
- d. Plaintiff's costs incurred;
- e. Pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded;
- f. Such other and further relief deemed just and proper under equity or law.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Dated: September 26, 2023

HURT STOLZ, P.C.

/s/ James W. Hurt, Jr.

By: James W. Hurt, Jr.

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