

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LAURIE NICHOLSON, individually and on behalf of
herself and all others similarly situated,

No.: 3:16-cv-00258-SDD-EWD

Plaintiff,

vs.

Franciscan Missionaries of Our Lady Health System,
Franciscan Missionaries of Our Lady Health System
Investment Committee, and John Does 1-20,

Defendants.

**NOTICE OF PROPOSED SETTLEMENT OF ERISA CLASS ACTION LITIGATION
AND SETTLEMENT FAIRNESS HEARING**

This notice ("Notice") advises you of a proposed settlement (the "Settlement") of a class action lawsuit by Laurie Nicholson and Cynthia Francis on behalf of themselves, the Plans (referred to below), and as representatives of the Settlement Class against Defendants, alleging that they breached their fiduciary duties and violated the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

**PLEASE READ THIS NOTICE CAREFULLY.
A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.
YOU HAVE NOT BEEN SUED.**

As described in more detail below, the case concerns allegations that Defendants violated ERISA by operating the Plans (listed below) as "church plans" and, in doing so wrongfully denied ERISA protections to the Plans' participants. Defendants (listed below) contend that the Plans are ERISA-exempt "church plans" and deny that they did anything illegal, but are settling this case to avoid uncertainty and litigation expense. Defendant Franciscan Missionaries of Our Lady Health System, Inc. is the sole member of, and has sole voting control over, Our Lady of the Lake Hospital, Inc., Our Lady of Lourdes Regional Medical Center, Inc. and St. Francis Medical Center, Inc. (the "Operating Entities"). The Settlement requires the Operating Entities to contribute one hundred and twenty-five million dollars (\$125,000,000) to the Plans over a five-year period. Because the Plans are defined benefit pension plans, and not defined contribution plans like a 401(k) plan with individual accounts, the funding amounts will be contributed to the Plans as a whole, rather than to the individual accounts of the Plans' participants and beneficiaries. The Plans' participants who elected and received a lump sum distribution under the Lump Sum Window Benefit Program in 2016, and thus no longer have a claim to receive annualized benefits under their Plans, will each receive an additional lump-sum payment of four hundred fifty dollars (\$450.00). Additionally, the Settlement provides non-monetary equitable consideration, in that the Plans' participants will receive certain ERISA-like financial protections for the next fifteen (15) years. The Plans will still operate as "church plans."

The Court in charge of this case still has to decide whether to approve the Settlement. This process is explained in greater detail below.

Your legal rights might be affected if you are a member of the Settlement Class. "Settlement Class" means: All present or past participants of the Plans (both vested and non-vested) including those participants who accepted a lump sum or annuity benefit under the Lump Sum Window Benefit Program in 2016, and beneficiaries of the Plans as of the Effective Date of Settlement, including anyone added or designated by Settlement Class members as a beneficiary after the Effective Date of the Settlement.

Identification of Key Terms: This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement (the "Settlement Agreement"). The Settlement Agreement, and additional information with respect to this lawsuit and the Settlement, are available at <http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/>.

Reasons for the Settlement: The Settlement resolves all claims in the Action against Defendants. The Settlement is not, and should not be construed as, an admission of any fault, liability or wrongdoing whatsoever by any of the Defendants, who continue to deny any and all of the allegations of the Complaint. Laurie Nicholson and Cynthia Francis, the individuals representing the proposed Settlement Class (the "Settlement Class Representatives") and Class Counsel believe that the Settlement provides substantial financial

and administrative protections for the Settlement Class, and, when considered in light of the risks involved in the litigation, the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

Identification of Class Counsel: Any questions regarding the Settlement should be directed to Class Counsel: Mark Kindall or Douglas Needham of IZARD, KINDALL & RAABE, LLP, 29 South Main Street, Suite 305, West Hartford, Connecticut 06107, or Mark Gyandoh or Julie Siebert-Johnson of KESSLER TOPAZ MELTZER & CHECK, LLP, 280 King of Prussia Road, Radnor, Pennsylvania 19087. **Please do not contact the Court.** The Court cannot answer your questions.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

<i>YOUR LEGAL RIGHTS AND OPTIONS</i>	
DO NOTHING	You do not need to do anything in response to this Notice. If the Settlement is approved by the Court and you are a member of the Settlement Class, you will receive the benefits of the Settlement without having to file a claim or take any other action.
FILE AN OBJECTION	If you want to submit comments or objections to any aspect of the Settlement, you may write to the Court and the Parties' attorneys. <i>See</i> Question 11 below.
GO TO A HEARING	If you submit comments or objections to the Settlement to the Court, you and/or your attorney may appear at the Fairness Hearing and ask to speak to the Court. <i>See</i> Question 14 below.

This litigation (the "Action") was filed in federal district court against Franciscan Missionaries of Our Lady Health System, the Franciscan Missionaries of Our Lady Health System Investment Committee and the individual members of the Committee (together, the "Defendants") concerning: (a) the "Retirement Plan of Our Lady of the Lake Hospital and Affiliated Organizations"; (b) the "Pension Plan for Employees of Our Lady of Lourdes Regional Medical Center, Inc."; and (c) the "Retirement Plan for Employees of St. Francis Medical Center, Inc.," (together, the "Plans"). The Settlement Class Representatives and Defendants are referred to herein as the "Parties."

A copy of the Class Action Complaint ("Complaint") and other documents related to this Settlement are available at <http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/>.

SUMMARY OF SETTLEMENT

The Settlement provides for two types of monetary relief: contributions to the Plans and payments to participants who elected and received a lump sum distribution under the Lump Sum Window Benefit Program.

For participants that did not accept a lump sum payout of their future pension, Our Lady of the Lake Hospital, Inc., Our Lady of Lourdes Regional Medical Center, Inc. and St. Francis Medical Center, Inc. will jointly contribute a total of one hundred twenty-five million dollars (\$125,000,000) to the Plans over five (5) years after the Order approving the Settlement becomes final and non-appealable. Defendants will contribute thirty-five million dollars (\$35,000,000) to the Plans in the first, second and third years after the Court approves the Settlement and ten million dollars (\$10,000,000) in the fourth and fifth years, for a total of one hundred twenty-five million dollars (\$125,000,000). There is no specific formula for how these contributions will be allocated among the Plans and, at their sole discretion, Our Lady of the Lake Hospital, Inc., Our Lady of Lourdes Regional Medical Center, Inc. and St. Francis Medical Center, Inc. may opt to pre-pay into the Plans any portion of the contribution amounts.

Any participant who elected and received a lump sum or annuity distribution under the Lump Sum Window Benefit Program, will receive a payment in the amount of four hundred fifty dollars (\$450.00).

While the Plans will continue to operate as "church plans," the Settlement provides significant non-monetary equitable consideration, in that the participants in the Plan will receive certain ERISA-like protections relating to the payment of their benefits for the next fifteen (15) years. Defendants have also agreed to pay one million dollars (\$1,000,000) to be used to fund Class Counsel's requested attorneys' fees and no more than thirty-five thousand dollars (\$35,000) for expenses actually incurred by Class Counsel and/or Case Contribution Awards to the Settlement Class Representatives. The Court has the sole discretion as to whether, and/or in what amounts to award attorney's fees, expenses, and/or Case Contribution Awards.

As with any litigation, the Parties would face an uncertain outcome if the Action were to continue against Defendants. Continued litigation of the Action against Defendants could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all. Throughout this Action, the Settlement Class Representatives and Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Settlement Class Representatives were to prevail at trial. Defendants, among other things: (1) have denied, and continue to deny, the material allegations of the Complaint; (2) have denied, and continue to deny, any wrongdoing or liability whatsoever; (3) believe that they acted at all times reasonably and prudently with respect to the Plans, all participants and beneficiaries, and the Settlement Class; (4) would assert numerous defenses if this Settlement is not consummated; and (5) are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation. Nevertheless, the Parties have taken into account the uncertainty and risks inherent in this litigation, particularly its complex nature, and have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

Please visit <http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/> if you have additional questions.

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BASIC INFORMATION

1. Why did I get this Notice?

Either you or someone in your family may have been a participant in or beneficiary of the Plans during the Class Period. The Court has directed that this Notice be sent to you because, as a potential member of the Settlement Class, you have a right to know about the proposed Settlement with Defendants before the Court decides whether to approve the Settlement.

This Notice explains the Action, the Settlement, and your legal rights. The purpose of this Notice is to inform you of a hearing (the "Fairness Hearing") to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement, and to consider the application of Class Counsel for their attorneys' fees and reimbursement of litigation expenses as well as an application for Case Contribution Awards for the Settlement Class Representatives.

The Fairness Hearing will be held at 9:30 a.m. on February 6, 2018 before the Honorable Shelly D. Dick in the United States District Court for the Middle District of Louisiana, 777 Florida Street, Suite 301, Baton Rouge, Louisiana 70801, to determine:

- a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- b) Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement;
- c) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;
- d) Whether the Settlement Class should be certified pursuant to Federal Rule of Civil Procedure 23(a) and (b) for purposes of the Settlement and, with respect thereto, whether Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check, LLP should be appointed as Class Counsel and Tarca & Associates should be appointed as Liaison Counsel pursuant to Federal Rule of Civil Procedure 23(g);

The issuance of this Notice is not an expression of the Court’s opinion on the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, a contribution to the Plans will be made after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

2. How do I know whether I am part of the Settlement?

The Court has preliminarily certified the Action as a class action for settlement purposes only. You are a member of the Settlement Class if you were a participant in or beneficiary of the Plans on or before the Effective Date of Settlement (the “Class Period”).

3. What does the Settlement Agreement provide?

The Settlement provides that Our Lady of the Lake Hospital, Inc., Our Lady of Lourdes Regional Medical Center, Inc. and St. Francis Medical Center, Inc., the entities that sponsor the Plans, will contribute a total of one hundred twenty-five million dollars (\$125,000,000) to the Plans within five (5) years of when the Final Approval Order approving the Settlement becomes Final and non-appealable.

In addition to the \$125,000,000 in contributions to the Plans, each member of the Settlement Class who elected and received a lump sum or annuity distribution in 2016 as part of the Lump Sum Window Benefit Program will receive an additional lump-sum payment of four hundred fifty dollars (\$450.00).

While the Plans will continue to operate as “church plans,” the Settlement provides significant non-monetary equitable consideration, in that the Plans’ participants will receive certain ERISA-like protections for the next fifteen (15) years. Specifically, if the Plans have insufficient funds to pay full benefits to Plan Participants at any time in the next fifteen (15) years, the Operating Entities will contribute sufficient funds to make up any shortfall.

The above description of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement, which may be obtained at <http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/>.

4. What is the lawsuit about? What has happened so far?

On April 21, 2016, a putative class action complaint was filed in the Court against Franciscan Missionaries and other Defendants alleging violations of ERISA. The Complaint alleged that Defendants denied the Plans’ participants and beneficiaries the protections of ERISA by claiming the Plans were “church plans” that were exempt from ERISA. The Complaint alleged that the Plans did not qualify as “church plans.”

On July 25, 2016, Defendants filed motions to dismiss the Complaint, and Plaintiff responded on August 26, 2016.

On September 22, 2016, the Parties attempted to resolve the case through mediation. In preparation for the mediation session, Plaintiff reviewed the terms of each of the Plans and the Plans’ financial conditions, and consulted with an actuarial expert about how much money needed to be contributed to the Plans to comply with ERISA. The Parties hired an experienced mediator who helped the Parties negotiate. At the end of the mediation session on September 22, 2016, the Parties reached an agreement in principle on many of the terms of the Settlement. Defendants subsequently provided Plaintiff with additional information, and additional negotiations took place over the course of the next five months concerning all of the details of the Settlement.

The Settlement is the product of intensive, arm's-length negotiations between Class Counsel and counsel for the Defendants, with the assistance of a professional mediator.

5. Why is this case a class action?

In a class action, one or more plaintiffs sue on behalf of people who have similar claims. All of the individuals on whose behalf the Plaintiff in this Action is suing are "Class members," and they are also referred to in this Notice as members of the Settlement Class. The Court resolves the issues for all Class members. U.S. District Judge Shelly D. Dick is presiding over this case.

6. Why is there a settlement?

Under the proposed Settlement, the Court will not decide the merits of the Action in favor of either the Plaintiff or the Defendants. By agreeing to a Settlement, both the Plaintiff and the Defendants avoid the costs, risks and delays of litigating the Action.

This Settlement is the product of extensive arm's-length negotiations between Class Counsel and the Defendants' counsel, including utilizing the services of an experienced mediator. Throughout the Settlement negotiations, the Plaintiff and the Defendants were advised by various consultants and experts, including individuals with expertise in ERISA's funding requirements. Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class.

7. What rights am I giving up in the Settlement?

If the Settlement is approved, the Court will enter a judgment. This judgment will fully, finally, and forever release, relinquish, dismiss, and discharge the allegations of the Complaint that the Plans failed to comply with the requirements of ERISA and/or did not qualify as an ERISA-exempt "church plans" that were brought or could have been brought as of the date of the Settlement Agreement. Plaintiff, on behalf of herself and on behalf of the Settlement Class, will expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor and any and all provisions, rights and benefits of any similar statute, law or principle or common law of the United States, any state thereof, or any other jurisdiction."

Released Claims are not intended to include the release of any of the following: (a) any rights or duties arising out of the Settlement Agreement; (b) claims for individual benefits that are not based on the allegations in the case; (c) if the Roman Catholic Church ever disassociates itself from the Plans' sponsors, unless the Plans' sponsors promptly associate with another church, any claim arising prospectively under ERISA; and (d) any claim arising under ERISA with respect to any event occurring after: (i) the IRS determines that any of the Plans are not church plans; (ii) a court of law determines that any of the Plans do not qualify as church plans; or (iii) ERISA is amended to eliminate the church plan exemption.

8. Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from the Settlement. For settlement purposes, the Action was preliminarily certified under Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) (non-opt-out class) because the Court determined the requirements of that rule were satisfied. Thus, it is not possible for any of the member of the Settlement Class to exclude himself/herself from the Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action against the Defendants or are otherwise included in the release under the Settlement.

Although members of the Settlement Class cannot opt-out of the Settlement, they can object to the Settlement and ask the Court not to approve the Settlement.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The law firms of Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check, LLP represent the Settlement Class Representatives and the Settlement Class ("Class Counsel"), and Tarcza & Associates act as Liaison Class Counsel. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

To date, Class Counsel have not received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have counsel been reimbursed for their out-of-pocket expenses. If the Court approves the Settlement, Class Counsel will apply to the Court for an award of attorneys' fees and expenses, to be paid by Defendants. The Settlement Class will not be responsible for any payments to Class Counsel, and the Court will determine the actual amount of the award, if any, to be paid to Class Counsel by Defendants.

OBJECTING TO THE SETTLEMENT

11. How do I tell the Court if I don't like the Settlement?

Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to any term of the Settlement Agreement, may file an objection in writing. All written objections and supporting papers must: (1) clearly identify the case name and number "*Nicholson v. Franciscan Missionaries of Our Lady of Health System, Case No. 16-cv-258*"; (2) be filed with the Court and postmarked and mailed to Class Counsel and Defendants' Counsel at the addresses below on or before January 23, 2018; (3) set forth your full name, current address, and telephone number; (4) set forth a statement of the position you wish to assert, including the factual and legal grounds for the position; (5) set forth the names and a summary of testimony of any witnesses that you might want to call in connection with the objection; (6) provide copies of all documents that you wish to submit in support of your position; (7) provide the name(s), address(es) and phone number(s) of any attorney(s) representing you; (8) state the name, court, and docket number of any class action litigation in which you and/or your attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (9) include your signature.

The addresses for filing objections with the Court and service on counsel are listed below. Your written objection must be filed with the Court, and mailed to the counsel listed below, postmarked by no later than January 23, 2018:

File with the Clerk of the Court:

Clerk of the Court
United States District Court
Middle District of Louisiana
777 Florida Street
Baton Rouge, LA 70801

Re: *Nicholson v. Franciscan Missionaries of Our Lady of Health System*
Case No. 16-cv-258

To Class Counsel:

Robert A. Izard
Mark P. Kindall
Douglas P. Needham
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Fax: (860) 493-6290

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Radnor, PA 19087
Fax: (610) 667-7056

To Defendants' Counsel:

Howard Shapiro
Stacey C.S. Cerrone
Madeline C. Rea
Proskauer Rose LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
Fax: (504) 310-2022

Robert Rachal
Holifield, Janich, Rachal & Associates, PLLC
6415 West End Blvd.
New Orleans, LA 70124
Fax: (865) 566-0119

UNLESS OTHERWISE ORDERED BY THE COURT, ANY MEMBER OF THE SETTLEMENT CLASS WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT.

THE COURT'S FAIRNESS HEARING

12. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 9:30 a.m. on February 6, 2018, at the United States District Court for the Middle District of Louisiana, 777 Florida Street, Baton Rouge, Louisiana 70801.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

13. Do I have to come to the Fairness Hearing?

IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT YOU NEED NOT ATTEND THE FAIRNESS HEARING. Class Counsel will answer any questions the Court may have. You are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You may also have your own lawyer attend the Fairness Hearing at your expense, but such attendance is not necessary.

14. May I speak at the Fairness Hearing?

If you are a member of the Settlement Class and you have filed a timely objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Nicholson v. Franciscan Missionaries of Our Lady of Health System*, Case No. 16-cv-258." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on the attorneys listed above, postmarked no later than January 23, 2018 and must be filed with the Clerk of the Court, postmarked no later than January 23, 2018.

The Fairness Hearing may be delayed by the Court without further notice to the Class. If you wish to attend the Fairness Hearing, you should confirm the date and time with a member of Class Counsel.

IF YOU DO NOTHING

15. What happens if I do nothing at all?

If you do nothing and you are a Settlement Class member, you will release and dismiss your claims against Defendants and receive the benefits of the Settlement as described above in this Notice if the Settlement is approved.

GETTING MORE INFORMATION

16. How do I get more information?

This Notice summarizes the proposed Settlement. Full details of the Settlement are set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by making a written request to a member of Class Counsel listed above under item 11. Copies of the Settlement Agreement, as well as the Motion for Preliminary Approval seeking preliminary approval of the Settlement Agreement, and the Preliminary Approval Order, may also be viewed at <http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/>.

Dated: November 21, 2017

BY ORDER OF THE COURT