

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOAN CONCOVICH, individually, and	)	
on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
vs.	)	Case No.
	)	
AIR EVAC EMS, INC.,	)	Circuit Court for the First Judicial
a Missouri Corporation,	)	Circuit, Williamson County, Illinois
	)	Cause No.: 2015-LM-69
Defendant.	)	
	)	<b>JURY TRIAL DEMANDED</b>

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, Defendant Air Evac EMS, Inc. (“Air Evac”), by and through its undersigned counsel, hereby removes this action to the United States District Court for the Southern District of Illinois. As grounds for removal, Air Evac states as follows:

**PROCEDURAL BACKGROUND**

1. On February 5, 2015, Plaintiff commenced a putative class action by filing an Original Complaint (the “Complaint”) against Air Evac in the Circuit Court for the First Judicial Circuit, Williamson Count, Illinois, captioned as Joan Concovich, etc. v. Air Evac EMS, Inc., Case No. 2015-LM-69 (the “State Court Action”).

2. A true and accurate copy of the entire file from the State Court Action is attached hereto as Exhibit A.

3. On February 17, 2015, Air Evac was served with the Summons, a copy of the Complaint and Plaintiff’s Motion for Conditional Certification. A true and accurate

copy of all pleadings and process served on Air Evac is attached hereto as Exhibit B. These are the only pleadings or process served on Air Evac.

4. This removal is timely under 28 U.S.C. §1446(b) in that it has been filed within thirty (30) days of February 17, 2015. See Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (holding that the thirty (30) day removal period does not begin to run until a defendant is formally served with summons and the petition).

5. Air Evac has not entered its appearance, filed a responsive pleading or otherwise responded to the Complaint in the State Court Action.

6. Pursuant to the requirements of 28 U.S.C. §1446(d), Air Evac will promptly notify Plaintiff in writing of the filing of this Notice of Removal. See Exhibit C attached hereto.

7. Pursuant to the requirements of 28 U.S.C. §1446(d), Air Evac will promptly advise the Clerk of the Circuit Court for the First Judicial Circuit, Williamson County, Illinois of the removal of the State Court Action by filing a Notice of Filing of Notice of Removal (which will include a copy of this Notice of Removal) with the Clerk. See Exhibit C attached hereto.

8. Pursuant to the requirements of 28 U.S.C. §1446(a), this Notice of Removal is filed in the District Court of the United States for the District and Division in which the State Court Action is pending.

9. No admission of fact, law or liability is intended by this Notice, and all defenses, affirmative defenses and motions are hereby preserved.

### **FACTUAL BACKGROUND**

10. In this action, Plaintiff seeks to represent a putative class consisting of:

those persons who are citizens of the State of Illinois as of the date this action is filed and who had private insurance or a health plan that covered air ambulance services and who within three years of the date this case was filed were charged by the defendant for the portion of its air ambulance charges not paid by their private insurance or a health plan.

See Complaint, at ¶ 13.

11. Accordingly, the class period is defined as the three (3) year period prior to the filing of the Complaint (the “Class Period”). Id.

12. Plaintiff alleges that Air Evac “is in the business of selling memberships in the AirMedCare Network and publicly solicited memberships in said Network by advertising the information on Exhibit A [of the Complaint] with the intent that consumers rely on such information and purchase those memberships.” See Complaint, at ¶ 8.

13. Plaintiff further alleges that Air Evac “included with the information provided to plaintiff and others the promise that it would consider its ‘air ambulance costs that are not covered by any insurance, benefits, or third party responsibility available to any member to have been fully prepaid.’” See Complaint, at ¶ 9.

14. Plaintiff claims that the above promise is illusory and misleading. See Complaint, at ¶ 10.

15. The Complaint purports to assert a sole cause of action against Air Evac “under 815 ILCS 505, para 10(a), the Illinois Consumer Fraud and Deceptive [Business] Practices Act.” See Complaint, at ¶ 11.

16. In addition to seeking certification of the “class,” Plaintiff seeks, *inter alia*, the following relief:

- judgment “[e]njoining Defendant’s illegal conduct alleged herein and ordering disgorgement of any of its ill-gotten gains”;
- an award of compensatory damages and reasonable attorney’s fees and costs; and
- “the cancellation of any debt claimed by defendant against any class members for air ambulance services . . .”

See Complaint at p. 4, ¶¶ D, E and F.

**THIS COURT HAS JURISDICTION PURSUANT TO CAFA**

17. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d) and 1453, the Class Action Fairness Act (“CAFA”).

18. This action is a “class action” as defined by CAFA, *i.e.*, a “civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” See 28 U.S.C. §§1453(a), 1332(d)(1)(B).

19. CAFA extends federal jurisdiction to all putative class actions in which: (a) there are 100 or more members in the proposed class; (b) there is minimal diversity, *i.e.*, at least one member of the proposed class is a citizen of a State different from any Defendant; and (c) the aggregated claims of the individual class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2), (5), and (6). See also Appert v. Morgan Stanley Dean Witter, Inc., 673 F.3d 609, 617 (7th Cir. 2012). This action satisfies all of these requirements.

**A. The Proposed Class Consists of Thousands of Individuals.**

20. During the alleged Class Period, there were approximately 3,600 citizens of the State of Illinois who (a) used Air Evac's air ambulance services, (b) had private insurance or a health plan that covered air ambulance services, and (c) for whom private insurance or a health plan paid some, but not all, of Air Evac's charges for these services. See Declaration of Eric J. Thomas attached hereto as Exhibit D.

21. Accordingly, Plaintiff's proposed class consists of more than 100 members.

**B. There is Minimal Diversity in this Action.**

22. Plaintiff alleges that she is a citizen of the State of Illinois. See Complaint, at ¶ 1.

23. Air Evac is a corporation organized under the laws of the State of Missouri, and it has its principal place of business located at 1001 Boardwalk Springs Place, O'Fallon, Missouri 63368. Id.; see also Exhibit D attached hereto. Thus, Air Evac is a citizen of the State of Missouri for purposes of diversity jurisdiction.

24. Accordingly, there is minimal diversity between Plaintiff and Air Evac satisfying the minimal diversity requirement of CAFA.

**C. The Aggregated Claims of the Putative Class Members Exceed \$5 Million.**

25. CAFA requires aggregation of the individual putative class members' claims, exclusive of interest and costs, to determine the jurisdictional amount. See 28 U.S.C. §1332(d)(6).

26. In Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547 (2014), the Supreme Court held that a party's notice of removal under CAFA "need only include a plausible allegation that the amount in controversy exceeds the jurisdictional

threshold.” Id. at 554. See also Spivey v. Vertrue, Inc., 528 F.3d 982, 986 (7th Cir. 2008) (a party seeking to remove under CAFA “bears the burden of describing how the controversy exceeds \$5 million. This is a pleading requirement, not a demand for proof.”).

27. Moreover, “once the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5 million . . . , then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” Spivey, 528 F.3d at 986.

28. A defendant who removes a case under CAFA “need not ‘confess liability in order to show that the controversy exceeds the threshold’ . . . . The demonstration concerns what the plaintiff is claiming (and thus the amount in controversy between the parties), not whether plaintiff is likely to win or be awarded everything he seeks.” Id. Accordingly, Air Evac disputes the validity of Plaintiff’s allegations and claims including, but not limited to, Plaintiff’s ability to maintain this action as a class action. However, applying Plaintiff’s proposed “class” definition demonstrates that the jurisdictional amount is readily satisfied in this case.

29. As set forth above, during the alleged Class Period, there were approximately 3,600 citizens of the State of Illinois who had private insurance or a health plan that covered air ambulance services, but for whom the private insurance or health plan did not pay all of the charges for the services provided to these citizens by Air Evac. With respect to those 3,600 citizens, the total aggregate balance for the amount of the charges not paid by their private insurance or a health plan was approximately \$5.48 million (approximately \$1.38 million with respect to members of the AirMedCare

Network program and approximately \$4.1 million with respect to non-members). See Exhibit D attached hereto. After applying various additional payments and other credits, the current outstanding balance is approximately \$3.32 million (approximately \$349,000 with respect to members of the AirMedCare Network program and approximately \$2.97 million with respect to non-members).

30. In addition, the Plaintiff's Complaint seeks an award of attorney's fees and costs as part of the underlying claims. See Complaint, at p. 4 ¶ E. The Court may also consider the availability of attorneys' fees and costs under the Illinois Consumer Fraud and Deceptive Business Practices Act when determining whether the jurisdictional amount in controversy is satisfied. See 815 ILCS 505 Sec. 10a (c) (court may award reasonable attorney's fees and costs to the prevailing party). See also EL v. Americredit Financial Services, Inc., 710 F.3d 748 (7th Cir. 2013) (if attorney's fees and costs "are sought as part of an underlying claim, rather than pursuant to a separate post-judgment right to 'costs' or 'fees' incurred in the litigation, they are considered part of the amount in controversy.").

31. Furthermore, punitive damages are available under the Illinois Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/10a] and the Court may also consider the availability of punitive damages when determining whether a putative class' aggregated damages exceed the jurisdictional minimum required under CAFA. See Keeling v. Esurance Ins. Co., 660 F.3d 273, 275 (7th Cir. 2011); see also Cadek v. Great Lakes Dragaway, 58 F.3d 1209, 1211 (7th Cir. 1995) ("Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining the jurisdictional amount.").

32. Finally, the Complaint seeks a judgment “[e]njoining [Air Evac’s] illegal conduct alleged herein . . . .” See Complaint, at p. 4 ¶ D. The value of injunctive relief sought in a class action “cannot be ignored in the calculation of the amount in controversy” under CAFA. See Keeling, 660 F.3d at 274. To the extent Plaintiff’s claims for injunctive relief seek to prevent Air Evac from collecting remaining amounts owed for air ambulance services provided to putative “class members” after applying applicable private insurance or health plan payments, the value of such relief would be in excess of \$5 million; e.g., see ¶ 29 above with respect to the amounts not paid by private insurance or a health plan during the Class Period.

33. Accordingly, it is clear that the aggregated claims of the individual putative class members exceed the sum of \$5 million, exclusive of interest and costs.

### **CONCLUSION**

34. For all the forgoing reasons, removal is proper and this Court has original jurisdiction over this case under CAFA.

WHEREFORE, Defendant Air Evac EMS, Inc. respectfully requests that this action, captioned as Joan Concovich, etc. v. Air Evac EMS, Inc., Case No. 2015-LM-69 and currently pending in the Circuit Court for the First Judicial Circuit, Williamson County, Illinois, be removed to this Court, that this Court exercise its subject matter jurisdiction over this matter, and grant such other and further relief as it deems necessary and appropriate.



Dated: March 17, 2015

Respectfully submitted,

**HUSCH BLACKWELL LLP**

By: /s/ Christopher J. Valeriote

Harry B. Wilson, 6276966

Christopher J. Valeriote, 54133MO (Lead Counsel)

Kyle P. Seelbach, 6233971 (Pending Admission)

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***Attorneys for Defendant Air Evac EMS, Inc.***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon Counsel of Record, and via electronic mail this 17<sup>th</sup> day of March 2015, to the addressees shown below:

G. Patrick Murphy  
Murphy & Murphy LLC  
3415 Office Park Drive, Suite D  
Marion, IL 62959  
gpatrick@murphymurphyllc.com

Brian P. McGarry  
McGarry & Malkovich  
500 N. Market Street  
Marion, IL 62959  
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***Attorneys for Plaintiff***

/s/ Christopher J. Valeriotte

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JOAN CONCOVICH, individually, and on behalf of all others similarly situated,

+

(b) County of Residence of First Listed Plaintiff Johnston City, Illinois  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

G. Patrick Murphy, Murphy & Murphy LLC, 3415 Office Park Dr., Ste. D, Marion, IL 62959, (618) 248-3236; Brian P. McGarry, McGarry & Malkovich, 500 N. Market St., Marion, IL 62959, (618) 997-6473

**DEFENDANTS**

Air Evac EMS, Inc.

County of Residence of First Listed Defendant O'Fallon, Missouri  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Christopher J. Valeriotte, Kyle P. Seelbach, Harry B. Wilson, Husch Blackwell LLP, 190 Carondelet Plaza, Ste. 600, St. Louis, MO 63105, (314) 480-1500

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332, 1441, 1446 and 1453

Brief description of cause:

Putative Class Action Alleging Improper Billing

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/17/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christopher J. Valeriotte

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Ex. A

# RECORD SHEET

Case No. 15UM69

Nature of Case \_\_\_\_\_

Attorneys Murphy & Murphy

Joan Concorich

- Vs -

Air Eval Ems Inc



DATE

JUDGE AND  
REPORTER

COSTS

Dollars

Cents

2 5 15

Original Complaint Filed

2 5 15

Motion for Conditional Certification Filed

3 6 15

Affidavit of Service Filed

Ex. A

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

JOAN CONCOVICH, individually, and  
on behalf of all others similarly situated,

Plaintiff,

Vs.

AIR EVAC EMS, INC., a Missouri Corporation,

Defendant.

No. 2015-LM-69

**FILED**

FEB 05 2015

*Stuart Hall*  
CLERK OF THE CIRCUIT COURT

**ORIGINAL COMPLAINT**

1. The plaintiff, Joan Concovich, is a citizen of the State of Illinois and the Defendant, Air Evac EMS, Inc. is a corporation organized under the laws of the State of Missouri.

2. At all material times, the plaintiff was a member of what the defendant terms the AirMedCare Network and she was identified by the defendant as Member #318507.

3. The plaintiff was injured April 12, 2014 and incurred the expense of flight evacuations by the defendant in the amount of \$37,711.07, all of which was paid on her behalf by her insurer except for \$150.00 which the defendant claims is due and owing

4. The terms and conditions of membership in the AirMedCare Network are set forth in Exhibit A to this complaint.

5. The plaintiff has performed all things on her part to be performed in that she paid her membership fee in the amount of \$65.00 and requested that her balance of \$150.00 be extinguished as promised by the defendant.

6. The defendant has failed to extinguish its claim against plaintiff but has instead repeatedly tried to collect the \$150.00 as set forth in Exhibit B hereto.

7. The plaintiff joined the AirMedCare Network after seeing and reading information created by the defendant and advertised by the defendant as set forth on Exhibit A hereto.

8. The defendant is in the business of selling memberships in the AirMedCare Network and publicly solicited memberships in said Network by advertising the information on Exhibit A with the intent that consumers rely on such information and purchase those memberships.

9. The defendant included within the information provided to plaintiff and others the promise that it would consider its “air ambulance costs that are not covered by any insurance, benefits, or third party responsibility available to any member to have been fully prepaid.”

10. The above promise is illusory and misleading because members such as plaintiff who have private insurance that covers the cost of ambulance services are charged for the cost of ambulance services beyond the limits of such coverage if there is “third party responsibility” available to the member. The promise is illusory because plaintiff, like other putative class members, did in fact have insurance that covers ambulance services and it is misleading because “third party responsibility” is not defined or limited in any manner.

11. This action is brought under 815 ILCS 505, para 10(a), the Illinois Consumer Fraud and Deceptive Trade Practices Act.

12. The plaintiff has sustained actual damages in that she paid for a service that was worthless and she seeks a judicial declaration that the defendant’s claim against her is extinguished.

13. The plaintiff seeks to represent a class of those persons who are citizens of the State of Illinois as of the date this action is filed and who had private insurance or a health plan



that covered air ambulance services and who within three years of the date this case was filed were charged by the defendant for the portion of its air ambulance charges not paid by their private insurance or a health plan.

14. The number of Illinois citizens who have been denied benefits in the preceding three years makes joinder impracticable as plaintiff is informed and believes there are approximately 90 such persons.

15. The actionable words in this case, “third party responsibility available to such members” and “insurance or other benefits” present a question of law common to the class that predominate over any question affecting only individual members.

16. The plaintiff will adequately and fairly protect the interests of the class.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because the damages suffered by individual Class members are likely to be relatively small, each individual claim is thought to be less than \$1,000.00, especially given the burden and cost of individually conducting the complex litigation necessitated by the defendant’s actions. Even if class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the legal and factual controversies presented in this complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

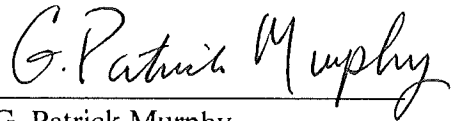
RELIEF REQUESTED:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, et seq., and certifying the Class defined herein both conditionally and finally;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Enjoining Defendant's illegal conduct alleged herein and ordering disgorgement of any of its ill-gotten gains;
- E. Awarding Plaintiff and the Class compensatory damages, in addition to reasonable attorney's fees and costs; and
- F. Granting all such further and other relief, including the cancellation of any debt claimed by defendant against any class members for air ambulance services as the Court deems just and appropriate.

Respectfully submitted,

JOAN CONCOVICH, Plaintiff.

By



G. Patrick Murphy  
ARDC #1994484

**McGARRY & MALKOVICH**

*Attorneys for Plaintiff*

Brian P. McGarry

500 N. Market Street

Marion, IL 62959

Ph: 618.997.6473

[bpmcgarry@frontier.com](mailto:bpmcgarry@frontier.com)

**MURPHY & MURPHY LLC**

*Attorneys for Plaintiff*

G. Patrick Murphy

3415 Office Park Drive, Suite D

Marion, IL 62959

Ph: 618.248.3236

[gpatrick@murphymurphyllc.com](mailto:gpatrick@murphymurphyllc.com)

**SECTION 1-109 CERTIFICATION**

G. Patrick Murphy under penalties as provided by law pursuant to Section 1-109 of *The Illinois Code of Civil Procedure*, certifies the plaintiff's individual claim does not exceed, including interests, costs, and counsel fees the sum of \$50,000.00.

By G. Patrick Murphy  
G. Patrick Murphy

## AEL Membership

### Terms and Conditions

An Air Evac EMS, Inc. d/b/a Air Evac Lifeteam ("Company") membership ensures the patient will have no out-of-pocket flight expenses if flown by the Company or another AirMedCare Network participating provider (together with the Company, each an "AMCN Provider") by providing prepaid protection against AMCN Provider air ambulance costs that are not covered by a member's insurance or other benefits or third party responsibility, subject to the following terms and conditions:

1. Patient transport will be to the closest appropriate medical facility for medical conditions that are deemed by AMCN Provider attending medical professionals to be life- or limb-threatening, or that could lead to permanent disability, and which require emergency air ambulance transport. A patient's medical condition, not membership status, will dictate whether or not air transportation is appropriate and required. Under all circumstances, an AMCN Provider retains the sole right and responsibility to determine whether or not a patient is flown.
2. AMCN Provider air ambulance services may not be available when requested due to factors beyond its control, such as use of the appropriate aircraft by another patient or other circumstances governed by operational requirements or restrictions including, but not limited to, equipment manufacturer limitations, governmental regulations, maintenance requirements, patient condition, age or size, or weather conditions. FAA restrictions prohibit most AMCN Provider aircraft from flying in inclement weather conditions. The primary determinant of whether to accept a flight is always the safety of the patient and medical flight crews.
3. Members who have insurance or other benefits, or third party responsibility claims, that cover the cost of ambulance services are financially liable for the cost of AMCN Provider services up to the limit of any such available coverage. In return for payment of the membership fee, the AMCN Provider will consider its air ambulance costs that are not covered by any insurance, benefits or third party responsibility available to the member to have been fully prepaid. The AMCN Provider reserves the right to bill directly any appropriate insurance, benefits provider or third party for services rendered, and members authorize their insurers, benefits providers and responsible third parties to pay any covered amounts directly to the AMCN Provider. Members agree to remit to the AMCN Provider any payment received from insurance or benefit providers or any third party for air medical services provided by the AMCN Provider, not to exceed regular charges. Neither the Company nor AirMed-Care Network is an Insurance company. Membership is not an insurance policy and cannot be considered as a secondary insurance coverage or a supplement to any insurance cover-age. Neither the Company nor AirMedCare Network will be responsible for payment for services provided by another ambulance service.

EXHIBIT A

4. Membership starts 15 days after the Company receives a complete application with full payment; however, the waiting period will be waived for unforeseen events occurring during such time. Members must be natural persons. Memberships are non-refundable and non-transferable.
5. Some state laws prohibit Medicaid beneficiaries from being offered membership or being accepted into membership programs. By applying, members certify to the Company that they are not Medicaid beneficiaries.
6. These terms and conditions supersede all previous terms and conditions between a member and the Company or AirMedCare Network, including any other writings, or verbal representations, relating to the terms and conditions of membership.



P.O. Box 106  
West Plains, MO 65775

patientaccounts@amgh.us  
Phone: (877) 288-5340

*Return Service Requested*

Call #: 30014364456A  
DOS: 04/12/2014  
Patient Name: Joan Conkovich

Dear Joan,

July 7, 2014

I'm writing to let you know that we will be sending your account to our legal department where they will be able to work with your attorney. Please feel free to contact us should you have any questions or concerns. Thank you, and take care.

A handwritten signature in black ink, appearing to be "Jol" or similar, written in a cursive style.

Patient Accounts

☎: 866.423.3003 Office

☎: 817.803.3478 E-Fax —

EXHIBIT B

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

JOAN CONCOVICH, individually, and  
on behalf of all others similarly situated,

Plaintiff,

Vs.

AIR EVAC EMS, INC., a Missouri Corporation,

Defendant.

No. 2015-LM-69

FILED

FEB 05 2015

*Stuart Hall*  
CLERK OF THE CIRCUIT COURT

MOTION FOR CONDITIONAL CERTIFICATION

Plaintiff moves the Court to conditionally certify the putative class described in Paragraph 13 of Plaintiff's Original Complaint in order that the interests of said class be protected and preserved.

Respectfully submitted,

JOAN CONCOVICH, Plaintiff.

By *G. Patrick Murphy*  
G. Patrick Murphy  
ARDC #1994484

**McGARRY & MALKOVICH**

*Attorneys for Plaintiff*

Brian P. McGarry

500 N. Market Street

Marion, IL 62959

Ph: 618.997.6473

[bpmcgarry@frontier.com](mailto:bpmcgarry@frontier.com)

**MURPHY & MURPHY LLC**

*Attorneys for Plaintiff*

G. Patrick Murphy

3415 Office Park Drive, Suite D

Marion, IL 62959

Ph: 618.248.3236

[gpatrick@murphymurphyllc.com](mailto:gpatrick@murphymurphyllc.com)



SHERIFF'S OFFICE OF COOK COUNTY, ILLINOIS

## AFFIDAVIT OF SERVICE

FOREIGN



CASE NUMBER: 15LM69

MULT.SER. 1

DOC. TYPE: SUMMONS

DIE DATE: 02/26/2015

RECEIVED DATE: 2/13/2015  
12:00:00 PM

FILED DATE: 02/05/2015

DIST: 604 DC

8

## DEFENDANT

AIR EVAC EMS, INC.  
208 S LASALLE ST  
CHICAGO, IL 60604

STE 814

## PLANTIFF

CONCOVICH, JOAN

## ATTORNEY

G. PATRICK MURPHY/MURPHY & MURPHY  
LLC  
3415 OFFICE PARK DR STE D  
MARION, IL 62959  
(618) 248-3236

FILED

MAR 06 2015

  
CLERK OF THE CIRCUIT COURT

## ATTACHED FEE AMOUNT:

## SERVICE INFORMATION:

C/O CT CORPORATION SYSTEM

## I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

(1) PERSONAL SERVICE:

BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.

(2) SUBSTITUTE SERVICE:

BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

(3) UNKNOWN OCCUPANTS:

BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.

(4) CORP/CO/BUS/PART:BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION  
☒ COMPANY ☐ BUSINESS ☐ PARTNERSHIP(5) PROPERTY RECOVERED:

NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.

(6) S.O.S./D.O.I.:

BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.

(7) CERTIFIED MAIL

\*\*\*\*\* COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT \*\*\*\*\*

(8) AND BY MAILING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.

## THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

☐ (01) NO CONTACT☐ (05) WRONG ADDRESS☐ (09) DECEASED☐ (02) MOVED☐ (06) NO SUCH ADDRESS☐ (10) NO REGISTERED AGENT☐ (03) EMPTY LOT☐ (07) EMPLOYER REFUSAL☐ (11) OUT OF COOK COUNTY☐ (04) NOT LISTED☐ (08) CANCELLED BY PLAINTIFF ATTY☐ (12) OTHER REASON (EXPLAIN)

EXPLANATION: \_\_\_\_\_

WRIT SERVED ON: K. STARKS APSEX: M/F 97RACE: BAGE: 40THIS 97DAY OF FEB20 15

Thomas J. Dart

SHERIFF, BY: M. Palomino

DEPUTY

## ATTEMPTED SERVICES

DATE

TIME (AM/PM)

STAR #

11:00A 10061

M. PALOMINO

LJ0385



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

DOC. TYPE: SUMMONS  
CASE NUMBER: 15LM69  
DEFENDANT  
AIR EVAC EMS, INC.  
208 S. LASALLE ST  
CHICAGO, IL 60604  
STE 814



DE DATE  
02/26/2015

JOAN CONCOVICH, individually, and }  
on behalf of all others similarly situated, }

Plaintiff, }

VS }

No. 2015-LM-69

AIR EVAC EMS, INC., a Missouri  
Corporation, }

Defendant. }

SUMMONS

To the defendant: Air Evac EMS, Inc.  
c/o CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file,

in the office of the clerk of this court Williamson County Courthouse, 200 W. Jefferson, Marion,  
(Insert name of building, room number, address, including city)

Illinois, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO  
DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE  
RELIEF ASKED IN THE COMPLAINT.

To the officer: Sheriff of Cook County, IL

This summons must be returned by the officer or other persons to whom it was given for service, with  
endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall  
be returned so endorsed. This summons may not be served later than 30 days after its date.

WITNESS February 5, 2015

(Seal of Court)

Stuart Hall

Clerk of court

Xg

Associate Circuit Clerk-Deputy

Name G. Patrick Murphy / Murphy & Murphy LLC  
Attorney for Plaintiff, Joan Concovich  
Address 3415 Office Park Dr., Suite D  
City Marion, IL 62959  
Telephone 618.248.3236

Date of service: \_\_\_\_\_  
(To be inserted by officer on copy left with defendant or other person)

FOREIGN

SHERIFF'S FEES

( Service and return .....	\$ _____
( Miles .....	\$ _____
( Total .....	\$ _____

Sheriff of \_\_\_\_\_ County

I certify that I served this summons on defendants as follows:

(a)-(Individual defendants – personal):

(The officer or other person making service, shall (a) identify as to sex, race and approximate age of the defendant with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant).

(b)-(Individual defendants – abode):

By leaving a copy of the complaint at the usual place of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons. (The officer or other person making service, shall (a) identify as to sex, race and approximate age of the person, other than the defendant, with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of day when the summons was left with such person).

and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Mailing Address	Date of mailing
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c)-(Corporate defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of Service
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d)-(Other service):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Sheriff of \_\_\_\_\_ County

By: \_\_\_\_\_  
(Deputy)

Ex. B



**Service of Process  
Transmittal**

02/17/2015

CT Log Number 526593699

**TO:** Thomas Cook  
Air Medical Group Holdings, Inc.  
1001 Boardwalk Springs Pl Ste 250  
O Fallon, MO 63368-4100

**RE:** Process Served in Illinois

**FOR:** Air EVAC EMS, INC. (Domestic State: MO)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Joan Concovich, Individually, and on behalf of all others similarly situated, pltf. vs. Air EVAC EMS, INC., etc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Attachment(s), Complaint, Certification, Exhibit(s), Motion

**COURT/AGENCY:** Williamson County - 1st Judicial Circuit Court, IL  
Case # 2015LM69

**NATURE OF ACTION:** The plaintiff has sustained actual damages in that she paid for a service that was worthless and she seeks a judicial declaration that the defendant's claim against her is extinguished

**ON WHOM PROCESS WAS SERVED:** C.T. Corporation System, Chicago, IL

**DATE AND HOUR OF SERVICE:** By Process Server on 02/17/2015 at 10:30

**JURISDICTION SERVED:** Illinois

**APPEARANCE OR ANSWER DUE:** Within 30 days after service, not counting the day of service

**ATTORNEY(S) / SENDER(S):** G. Patrick Murphy  
Murphy & Murphy LLC  
3415 Office Park Drive  
Suite D  
Marion, IL 62959  
618-248-3236

**ACTION ITEMS:** CT has retained the current log, Retain Date: 02/18/2015, Expected Purge Date: 02/23/2015  
Image SOP  
Email Notification, Ellen Harmon ellen.harmon@amgh.us  
Email Notification, Thomas Cook Thomas.Cook@amgh.us  
Email Notification, Dawn Martens-Rice dawn.martens@amgh.us

**SIGNED:** C.T. Corporation System

**ADDRESS:** 208 South LaSalle Street  
Suite 814  
Chicago, IL 60604

**TELEPHONE:** 312-345-4336

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

JOAN CONCOVICH, individually, and  
on behalf of all others similarly situated

Plaintiff,

VS

AIR EVAC EMS, INC., a Missouri  
Corporation,

Defendant.

FOREIGN

No. 2015-LM-69

SUMMONS

DOC. TYPE: SUMMONS  
CASE NUMBER: 15LM69  
DEFENDANT  
AIR EVAC EMS, INC.  
208 S. LASALLE ST.  
CHICAGO, IL 60604  
STE 814



DE DATE  
02/26/2015

ATTACHED

SERVICE INF  
C/O CT COR

To the defendant: Air Evac EMS, Inc.

c/o CT Corporation System, 208 S. LaSalle St., Suite 814, Chi

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance,

in the office of the clerk of this court Williamson County Courthouse, 200 W. Jefferson, Marion,

(Insert name of building, room number, address, including city)

Illinois, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO  
DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE  
RELIEF ASKED IN THE COMPLAINT.

To the officer: Sheriff of Cook County, IL

This summons must be returned by the officer or other persons to whom it was given for service, with  
endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall  
be returned so endorsed. This summons may not be served later than 30 days after its date.

WITNESS February 5, 2015

(Seal of Court)

Stuart Hall

Clerk of court

Kay  
Associate Circuit Clerk Deputy

Name G. Patrick Murphy / Murphy & Murphy LLC  
Attorney for Plaintiff, Joan Concovich  
Address 3415 Office Park Dr., Suite D  
City Marion, IL 62959  
Telephone 618.248.3236

Date of service: 2/19/15, 20\_\_\_\_  
(To be inserted by officer on copy left with defendant or other person)

SHERIFF'S FEES

( Service and return .....	\$ .....
( Miles .....	\$ .....
( Total .....	\$ .....

Sheriff of \_\_\_\_\_ County

I certify that I served this summons on defendants as follows:

(a)-(Individual defendants – personal):

(The officer or other person making service, shall (a) identify as to sex, race and approximate age of the defendant with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant).

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b)-(Individual defendants – abode):

By leaving a copy of the complaint at the usual place of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons. (The officer or other person making service, shall (a) identify as to sex, race and approximate age of the person, other than the defendant, with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of day when the summons was left with such person).

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Mailing Address	Date of mailing
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c)-(Corporate defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of Service
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d)-(Other service):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Sheriff of \_\_\_\_\_ County

By: \_\_\_\_\_  
 (Deputy)

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

JOAN CONCOVICH, individually, and  
on behalf of all others similarly situated,

Plaintiff,

Vs.

AIR EVAC EMS, INC., a Missouri Corporation,

Defendant.

No. 2015-LM-69

**FILED**

FEB 05 2015

ORIGINAL COMPLAINT

*Stuart Hall*  
CLERK OF THE CIRCUIT COURT

1. The plaintiff, Joan Concovich, is a citizen of the State of Illinois and the Defendant, Air Evac EMS, Inc. is a corporation organized under the laws of the State of Missouri.
2. At all material times, the plaintiff was a member of what the defendant terms the AirMedCare Network and she was identified by the defendant as Member #318507.
3. The plaintiff was injured April 12, 2014 and incurred the expense of flight evacuations by the defendant in the amount of \$37,711.07, all of which was paid on her behalf by her insurer except for \$150.00 which the defendant claims is due and owing
4. The terms and conditions of membership in the AirMedCare Network are set forth in Exhibit A to this complaint.
5. The plaintiff has performed all things on her part to be performed in that she paid her membership fee in the amount of \$65.00 and requested that her balance of \$150.00 be extinguished as promised by the defendant.
6. The defendant has failed to extinguish its claim against plaintiff but has instead repeatedly tried to collect the \$150.00 as set forth in Exhibit B hereto.

7. The plaintiff joined the AirMedCare Network after seeing and reading information created by the defendant and advertised by the defendant as set forth on Exhibit A hereto.

8. The defendant is in the business of selling memberships in the AirMedCare Network and publicly solicited memberships in said Network by advertising the information on Exhibit A with the intent that consumers rely on such information and purchase those memberships.

9. The defendant included within the information provided to plaintiff and others the promise that it would consider its “air ambulance costs that are not covered by any insurance, benefits, or third party responsibility available to any member to have been fully prepaid.”

10. The above promise is illusory and misleading because members such as plaintiff who have private insurance that covers the cost of ambulance services are charged for the cost of ambulance services beyond the limits of such coverage if there is “third party responsibility” available to the member. The promise is illusory because plaintiff, like other putative class members, did in fact have insurance that covers ambulance services and it is misleading because “third party responsibility” is not defined or limited in any manner.

11. This action is brought under 815 ILCS 505, para 10(a), the Illinois Consumer Fraud and Deceptive Trade Practices Act.

12. The plaintiff has sustained actual damages in that she paid for a service that was worthless and she seeks a judicial declaration that the defendant’s claim against her is extinguished.

13. The plaintiff seeks to represent a class of those persons who are citizens of the State of Illinois as of the date this action is filed and who had private insurance or a health plan



that covered air ambulance services and who within three years of the date this case was filed were charged by the defendant for the portion of its air ambulance charges not paid by their private insurance or a health plan.

14. The number of Illinois citizens who have been denied benefits in the preceding three years makes joinder impracticable as plaintiff is informed and believes there are approximately 90 such persons.

15. The actionable words in this case, “third party responsibility available to such members” and “insurance or other benefits” present a question of law common to the class that predominate over any question affecting only individual members.

16. The plaintiff will adequately and fairly protect the interests of the class.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because the damages suffered by individual Class members are likely to be relatively small, each individual claim is thought to be less than \$1,000.00, especially given the burden and cost of individually conducting the complex litigation necessitated by the defendant’s actions. Even if class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the legal and factual controversies presented in this complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

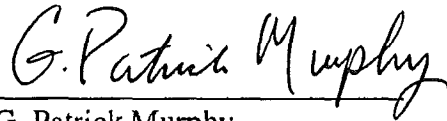
**RELIEF REQUESTED:**

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, et seq., and certifying the Class defined herein both conditionally and finally;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Enjoining Defendant's illegal conduct alleged herein and ordering disgorgement of any of its ill-gotten gains;
- E. Awarding Plaintiff and the Class compensatory damages, in addition to reasonable attorney's fees and costs; and
- F. Granting all such further and other relief, including the cancellation of any debt claimed by defendant against any class members for air ambulance services as the Court deems just and appropriate.

Respectfully submitted,

JOAN CONCOVICH, Plaintiff.

By



G. Patrick Murphy  
ARDC #1994484

**McGARRY & MALKOVICH**

*Attorneys for Plaintiff*

Brian P. McGarry

500 N. Market Street

Marion, IL 62959

Ph: 618.997.6473

[bpmcgarry@frontier.com](mailto:bpmcgarry@frontier.com)

**MURPHY & MURPHY LLC**

*Attorneys for Plaintiff*

G. Patrick Murphy

3415 Office Park Drive, Suite D

Marion, IL 62959

Ph: 618.248.3236

[gpatrick@murphymurphyllc.com](mailto:gpatrick@murphymurphyllc.com)

**SECTION 1-109 CERTIFICATION**

G. Patrick Murphy under penalties as provided by law pursuant to Section 1-109 of *The Illinois Code of Civil Procedure*, certifies the plaintiff's individual claim does not exceed, including interests, costs, and counsel fees the sum of \$50,000.00.

By G. Patrick Murphy  
G. Patrick Murphy

## AEL Membership

### Terms and Conditions

An Air Evac EMS, Inc. d/b/a Air Evac Lifeteam ("Company") membership ensures the patient will have no out-of-pocket flight expenses if flown by the Company or another AirMedCare Network participating provider (together with the Company, each an "AMCN Provider") by providing prepaid protection against AMCN Provider air ambulance costs that are not covered by a member's insurance or other benefits or third party responsibility, subject to the following terms and conditions:

1. Patient transport will be to the closest appropriate medical facility for medical conditions that are deemed by AMCN Provider attending medical professionals to be life- or limb-threatening, or that could lead to permanent disability, and which require emergency air ambulance transport. A patient's medical condition, not membership status, will dictate whether or not air transportation is appropriate and required. Under all circumstances, an AMCN Provider retains the sole right and responsibility to determine whether or not a patient is flown.
2. AMCN Provider air ambulance services may not be available when requested due to factors beyond its control, such as use of the appropriate aircraft by another patient or other circumstances governed by operational requirements or restrictions including, but not limited to, equipment manufacturer limitations, governmental regulations, maintenance requirements, patient condition, age or size, or weather conditions. FAA restrictions prohibit most AMCN Provider aircraft from flying in inclement weather conditions. The primary determinant of whether to accept a flight is always the safety of the patient and medical flight crews.
3. Members who have insurance or other benefits, or third party responsibility claims, that cover the cost of ambulance services are financially liable for the cost of AMCN Provider services up to the limit of any such available coverage. In return for payment of the membership fee, the AMCN Provider will consider its air ambulance costs that are not covered by any insurance, benefits or third party responsibility available to the member to have been fully prepaid. The AMCN Provider reserves the right to bill directly any appropriate insurance, benefits provider or third party for services rendered, and members authorize their insurers, benefits providers and responsible third parties to pay any covered amounts directly to the AMCN Provider. Members agree to remit to the AMCN Provider any payment received from insurance or benefit providers or any third party for air medical services provided by the AMCN Provider, not to exceed regular charges. Neither the Company nor AirMed-Care Network is an insurance company. Membership is not an insurance policy and cannot be considered as a secondary insurance coverage or a supplement to any insurance cover-age. Neither the Company nor AirMedCare Network will be responsible for payment for services provided by another ambulance service.

EXHIBIT A

4. Membership starts 15 days after the Company receives a complete application with full payment; however, the waiting period will be waived for unforeseen events occurring during such time. Members must be natural persons. Memberships are non-refundable and non-transferable.
5. Some state laws prohibit Medicaid beneficiaries from being offered membership or being accepted into membership programs. By applying, members certify to the Company that they are not Medicaid beneficiaries.
6. These terms and conditions supersede all previous terms and conditions between a member and the Company or AirMedCare Network, including any other writings, or verbal representations, relating to the terms and conditions of membership.



P.O. Box 106  
West Plains, MO 65775

patientaccounts@amgh.us  
Phone: (877) 288-5340

*Return Service Requested*

Call #: 30014364456A  
DOS: 04/12/2014  
Patient Name: Joan Conkovich

Dear Joan,

July 7, 2014

I'm writing to let you know that we will be sending your account to our legal department where they will be able to work with your attorney. Please feel free to contact us should you have any questions or concerns. Thank you, and take care.

Patient Accounts

☎: 866.423.3003 Office

☎: 817.803.3478 E-Fax

**EXHIBIT B**

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

JOAN CONCOVICH, individually, and  
on behalf of all others similarly situated,

Plaintiff,

Vs.

AIR EVAC EMS, INC., a Missouri Corporation,

Defendant.

No. 2015-LM-69

**FILED**

FEB 05 2015

*Stuart Hall*  
CLERK OF THE CIRCUIT COURT

**MOTION FOR CONDITIONAL CERTIFICATION**

Plaintiff moves the Court to conditionally certify the putative class described in Paragraph 13 of Plaintiff's Original Complaint in order that the interests of said class be protected and preserved.

Respectfully submitted,

JOAN CONCOVICH, Plaintiff.

By *G. Patrick Murphy*  
G. Patrick Murphy  
ARDC #1994484

**McGARRY & MALKOVICH**  
*Attorneys for Plaintiff*  
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500 N. Market Street  
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Ph: 618.997.6473  
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**MURPHY & MURPHY LLC**  
*Attorneys for Plaintiff*  
G. Patrick Murphy  
3415 Office Park Drive, Suite D  
Marion, IL 62959  
Ph: 618.248.3236  
[gpatrick@murphymurphyllc.com](mailto:gpatrick@murphymurphyllc.com)

Ex. C



**IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS**

JOAN CONCOVICH, individually, and on behalf ) of all others similarly situated, ) Plaintiffs, ) v. )	Case No. 2015-LM-69
AIR EVAC EMS, INC., A Missouri Corporation, ) Defendant. )	

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**DEFENDANT AIR EVAC EMS, INC.'S  
NOTICE OF FILING NOTICE OF REMOVAL**

TO: Clerk of the Circuit Court  
First Judicial Circuit, Williamson County  
200 West Jefferson Street, Ste. 100  
Marion, Illinois 62959

To: G. Patrick Murphy  
Murphy & Murphy LLC  
3415 Office Park Drive, Suite D  
Marion, IL 62959  
gpatrick@murphymurphyllc.com

Brian P. McGarry  
500 N. Market Street  
Marion, IL 62959  
bpmcgarry@frontier.com

PLEASE TAKE NOTICE that Defendant Air Evac EMS, Inc. has on this 17th day of March 2015, filed its Notice of Removal with the Office of the Clerk of the United States District Court for the Southern District of Illinois, and that all pleadings regarding the removal are served upon Plaintiffs.

You are also advised that Defendant Air Evac EMS, Inc. has filed a copy of this Notice of Filing Notice of Removal with the Clerk of the Circuit Court for the First Judicial Circuit, Williamson County, Illinois. Pursuant to 28 U.S.C. § 1446(d), this Court

shall proceed no further with this action, which has been removed to the United States District Court for the Southern District of Illinois.

Dated: March 17, 2015

Respectfully submitted,

**HUSCH BLACKWELL LLP**

By: 

Harry B. Wilson, #6276966

Kyle P. Seelbach, #6233971

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105-3441

Phone: 314-480-1500

Facsimile: 314-480-1505

harry.wilson@huschblackwell.com

kyle.seelbach@huschblackwell.com

*Attorneys for Defendant Air Evac EMS, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed in paper with the Clerk of the Circuit Court, and served via electronic mail, and United States Mail, this 17<sup>th</sup> day of March 2015, to the addressees shown below:

G. Patrick Murphy  
Murphy & Murphy LLC  
3415 Office Park Drive, Suite D  
Marion, IL 62959  
gpatrick@murphymurphyllc.com

Brian P. McGarry  
McGarry & Malkovich  
500 N. Market Street  
Marion, IL 62959  
bpmcgarry@frontier.com

*Attorneys for Plaintiff*

A handwritten signature in dark ink, appearing to read "B. McGarry", is written over a solid horizontal line.

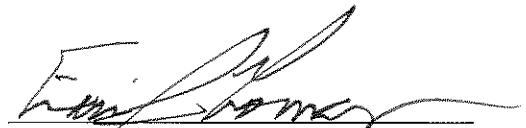
Ex. D



approximately \$5.48 million (approximately \$1.38 million with respect to members of the AirMedCare Network program and approximately \$4.1 million with respect to non-members). After applying various additional payments and other credits, the current outstanding balance is approximately \$3.32 million (approximately \$349,000 with respect to members of the AirMedCare Network program and approximately \$2.97 million with respect to non-members).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 16, 2015.



ERIC J. THOMAS