The Sixth Circuit has joined other circuits in unanimously holding that HIPAA creates no private right of action. That was the easy part. The panel divided 2-1 in ruling that a Tennessee statute likewise provides no remedy for patients allegedly overcharged by Ciox, a medical-records company. But *Faber v. Ciox Health* wasn’t a complete blowout: the court flagged Ciox’s attempt to spike the football by requiring a remand for classwide notice that...the class members lost.

Ciox is one of the largest medical-records providers in the country. It serves three of every five U.S. hospitals. Like other medical-records providers, Ciox is subject to HIPAA regulations, which limit the fees it may charge patients for accessing their medical records. Ciox is also subject to state regulations, which may layer on additional protections for patients.

Richard Faber and Jennifer Monroe sued in the WDTN on behalf of a class of patients who alleged that Ciox overcharged them. Wise to HIPAA’s lack of a private right of action, the plaintiffs styled their claims as various common-law causes of action. Judge Nalbandian’s majority opinion made short work of these: negligence (no general duty not to overcharge), negligence per se (not a cause of action), and quasi-
contract/implied-in-law/unjust enrichment (a Hail Mary that fell predictably short).

As to plaintiffs’ Tennessee Medical Records Act claim, the court divided. Judge Merritt’s partial dissent located a private right of action in a 1997 Tennessee Court of Appeals decision (Pratt v. Smart Corp.) and other states’ precedents. But the majority (with Kethledge joining) held the “unambiguously clear” statutory text applied fee limits only to hospitals, not medical-records providers. The panel majority had “little doubt” that the Tennessee Supreme Court—whose rulings would bind the Sixth Circuit in a way the intermediate appellate court’s would not—“would disagree with Pratt.”

Having finished its meaty health-law menu, the opinion wrapped up with a tasty civ-pro course—indeed, a bona fide issue spotter appropriate for the approaching 1L exam season. When the district court granted summary judgment, it had granted class certification, but not yet notified absent class members. So Ciox asked the Sixth Circuit for a remand “for the sole purpose of issuing opt-out notices at Plaintiffs’ expense.”

The court, however, recognized that post-judgment notice is not a terribly useful sort of notice. And it was too late for a “one-way street” post-judgment certification. Instead, the court followed the “general rule of movant beware.” A summary-judgment motion made before class cert (or, as here, before class notice) “carries the risk of only binding the named plaintiffs, and not the entire class.” As a result, the Sixth Circuit’s notable class-cert opinion won’t actually bind the class—only the named plaintiffs.

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