No. 13-0766 – *Larry Tabata, et al v. Charleston Area Medical Center, et al.*

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Justice Ketchum, dissenting:

This case is a typical example of a frivolous class-action lawsuit. The named plaintiffs' lawyer admitted during oral argument that discovery did not reveal that any of his client's medical records or personal information was accessed or viewed by any unauthorized person. As soon as it was discovered the information was placed accidently on the internet it was removed before any unauthorized person viewed the named plaintiffs' records. The majority opinion concedes that discovery reveals the named plaintiffs have suffered no injury.

No harm, no foul. The plaintiffs lack standing to sue or represent a class of unnamed plaintiffs.

Although the majority allows class certification, our law is clear that if discovery reveals that no unnamed member of the class has suffered harm that the trial judge should decertify the class action and dismiss the suit. Of course, this cannot occur until massive amounts of attorney fees are incurred by the defendants conducting discovery relating to more than 3,000 unnamed class members.

Therefore, I dissent.