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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL-1334—IN RE HUMANA INC. MANAGED CARE LITIGATION

Eugene Mangieri, M.D. v. Cigna Corp., et al., N.D. Alabama, C.A. No. 7:99-3254
Rodney J. Landry, et al. v. Humana, Inc., et al., S.D. Florida, C.A. No. 1:00-1658
(S.D. Mississippi, C.A. No. 2:99-325)

**MDL-1364—IN RE HEALTH CARE PROVIDERS/MANAGED CARE
COMPANIES LITIGATION**

**MDL-1366—IN RE PRUDENTIAL INSURANCE CO. OF AMERICA, INC.,
MANAGED CARE LITIGATION**

MDL-1367—IN RE AETNA INC. MANAGED CARE LITIGATION

**BEFORE JOHN F. NANGLE, CHAIRMAN, LOUIS C. BECHTLE, JOHN
F. KEENAN, WM. TERRELL HODGES,* MOREY L. SEAR, BRUCE M.
SELYA AND JULIA SMITH GIBBONS, JUDGES OF THE PANEL**

ORDER

At the hearing in the above-captioned matters, the Panel heard combined oral argument. Accordingly, the overlapping issues raised in these dockets will be addressed in this one order. The matters now before the Panel can be briefly described as follows:

MDL-1334: Presently before the Panel are motions by defendants¹ in the first above-captioned action (*Mangieri*), pursuant to Rule 7.4, R.P.J.P.M.L., 192 F.R.D. 459, 468-69 (2000), to vacate the Panel's order conditionally transferring claims against CIGNA and Aetna in *Mangieri* to the Southern District of Florida for inclusion in the Section 1407 proceedings occurring there in this docket. The *Mangieri* plaintiff favors inclusion of the entire *Mangieri* action in Section 1407 proceedings in this docket. The MDL-1364 moving plaintiffs oppose inclusion of *Mangieri* in Section 1407 proceedings in MDL-1334 and, instead, propose inclusion of *Mangieri* in Section 1407 proceedings in MDL-1364 in the Northern District of Alabama. Also before the Panel in this litigation is a motion by PacifiCare Health Systems, Inc. (PacifiCare) seeking Section 1407 remand of claims against it in a previously transferred amended action (*Landry*) to the Southern District of

* Judge Hodges took no part in the decision of this matter.

¹ Humana Inc. and Humana Health Plan Inc. (collectively referred to as Humana); Aetna Inc., Aetna U.S. Healthcare Inc. and Richard L. Huber (collectively referred to as Aetna); and CIGNA Corporation, CIGNA Health Corporation, Connecticut General Corporation, and H. Edward Hanway (collectively referred to as CIGNA).

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Mississippi. Humana and Foundation Health Systems, Inc. (FHS) support the motion. Plaintiff Debbie Hitsman along with certain other MDL-1334 plaintiffs oppose remand of these claims; these MDL-1334 plaintiffs seek centralization of all actions involving all managed care companies in the Southern District of Florida before Judge Federico A. Moreno.

MDL-1364: This litigation presently consists of eight actions: four actions in the Northern District of Georgia, two actions in the Northern District of California and one action each in the Northern District of Alabama (*Mangieri*) and Southern District of Florida.² Plaintiffs in the four Georgia actions seek Section 1407 centralization of all actions involving claims by various health care providers against various managed care defendants in the Northern District of Alabama. Plaintiffs in *Mangieri*, *Shane* and the two California actions agree that centralization is appropriate, but suggest centralization before Judge Moreno in the Southern District of Florida. Alternatively, the *Mangieri* and California plaintiffs support centralization of all non-Humana claims in the Northern District of Alabama. All defendants³ oppose the motion. If the Panel deems centralization appropriate, United and Prudential suggest the Northern District of Georgia as transferee district, while Aetna suggests centralization of all claims against Aetna in Eastern District of Pennsylvania. PacifiCare, FHS and Coventry ask the Panel to defer its ruling until certain pending motions have been ruled upon in their respective actions.

MDL-1366: This litigation presently consists of four actions, one action each in the Southern District of Florida, Southern District of Mississippi, District of New Jersey and Eastern District of Pennsylvania. Defendant Prudential seeks centralization of the actions (or claims against Prudential in these actions) under Section 1407 in the Southern District of Mississippi. Aetna supports the motion. All plaintiffs agree that centralization is appropriate, but disagree on the most appropriate transferee district. Plaintiffs in the Florida, Mississippi and Pennsylvania actions along with the MDL-1364 California plaintiffs and the *Mangieri* plaintiffs suggest centralization in the Florida court before Judge Moreno. The *Mangieri* and MDL-1364 California plaintiffs alternatively suggest centralization of all non-Humana claims in the Northern District of Alabama. The New Jersey plaintiffs and, alternatively, Prudential and the Pennsylvania plaintiffs suggest centralization of actions/claims against Prudential in the District of New Jersey.

MDL-1367: This litigation presently consists of six actions, one action each in the Northern District of Alabama (*Mangieri*), Northern District of California, Southern District of Florida, Southern District of Mississippi, District of New Jersey and Eastern District of Pennsylvania. Defendants Aetna and Aetna U.S. Healthcare of California Inc. seek Section 1407 centralization of the actions (or claims against Aetna defendants in these actions) in the Eastern District of Pennsylvania.⁴ Humana and CIGNA continue to advocate that the Panel i) include claims in *Mangieri* against Humana in MDL-1334 proceedings, and ii) separate claims and simultaneously remand claims in *Mangieri* against non-Humana defendants Cigna and Aetna to the Northern District

² The Panel included this action in MDL-1334 proceedings in July 2000. *Charles B. Shane, M.D., et al. v. Humana, Inc., et al.*, S.D. Florida, C.A. No. 1:00-2830 (W.D. Kentucky, C.A. No. 3:00-53).

³ Aetna and Aetna U.S. Healthcare of Georgia, Inc.; Blue Cross of California; CIGNA; Coventry Healthcare of Georgia, Inc. and Principal Health Care, Inc. (collectively referred to as Coventry); FHS; Prudential Insurance Co. of America, Inc. (Prudential) and Prudential Health Care Plan of Georgia, Inc.; PacifiCare; and United HealthCare of Georgia, Inc., and UnitedHealth Group, Inc. (collectively referred to as United).

⁴ The Panel has been notified that three potentially related actions have recently been filed in the District of Connecticut. These actions and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 192 F.R.D. 459, 468-470 (2000).

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of Alabama. Humana further supports the motion to centralize all actions/claims against Aetna in the Pennsylvania court. The *Mangieri*, California, Florida, Mississippi, New Jersey and Pennsylvania plaintiffs along with the MDL-1364 California plaintiffs advocate or continue to advocate centralization of all actions/claims against all managed care companies in the Southern District of Florida before Judge Moreno. The *Mangieri* and MDL-1364 California plaintiffs also continue to alternatively suggest centralization of non-Humana actions/claims in the Northern District of Alabama. In interested party responses, plaintiff the State of Connecticut along with individual plaintiffs in three recently filed Connecticut actions suggest centralization of all Aetna-related claims/actions in the District of Connecticut, while the State of Florida supports centralization of all managed care actions in the Southern District of Florida.

On the basis of the papers filed and the hearing held, the Panel finds that i) *Mangieri* involves common questions of fact with actions in this litigation previously transferred to the Southern District of Florida, and that transfer of all claims in *Mangieri* to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation; ii) remand of the claims against PacifiCare in *Landry* is premature, and iii) in varying degrees, all actions in MDL-1334, MDL-1364, MDL-1366 and MDL-1367 involve common questions of fact concerning whether defendants – either singly or as part of a conspiracy – implemented certain policies, including *inter alia* utilization review processes, physician financial incentives and/or failure to pay clean claims in a timely manner, which unlawfully deprived health care plan subscribers of the health care for which they contracted and/or unlawfully interfered with health care providers' delivery of that care. Centralization of all the actions under Section 1407 in the Southern District of Florida (or continued centralization of the actions/claims already in the Southern District of Florida) will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Congregating all these actions there is necessary in order to avoid duplication of discovery, prevent inconsistent or repetitive pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary. As a result, resolution of overlapping issues, such as class certification, any common practices, and the nature and existence of any conspiracy, will be streamlined.

Opponents of Section 1407 centralization of all actions in one multidistrict litigation argue that the presence of individual questions of fact and many claimants should produce a different result in order to avoid an unwieldy situation. These parties urge us, instead, to centralize related actions/claims on a company-by-company basis in MDL-1334 (Humana), MDL-1366 (Prudential) and MDL-1367 (Aetna), or on a provider/subscriber basis by separating provider actions into MDL-1364. We are unpersuaded by these arguments. Indeed, we point out that transfer to a single district under Section 1407 has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. We note that i) Judge Moreno has already established two separate tracks in MDL-1334, one for subscriber actions and the other for provider actions, and ii) he has set schedules for briefing and oral argument on various motions on a company-by-company basis.

It may be, on further refinement of the issues and close scrutiny by Judge Moreno, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. But we are unwilling, on the basis of the record before us, to make such a determination at this time. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, 192 F.R.D. at 470-72. We are confident in Judge Moreno's ability to streamline pretrial

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proceedings in these actions, while concomitantly directing the appropriate resolution of all claims.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. §1407, *Eugene Mangieri, M.D. v. Cigna Corp., et al.*, N.D. Alabama, C.A. No. 7:99-3254, be, and the same hereby is, TRANSFERRED to the Southern District of Florida, and, with the consent of that court, assigned to the Honorable Federico A. Moreno for inclusion in the coordinated or consolidated pretrial proceedings occurring there in MDL-1334.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. §1407, the motion to remand the claims against PacifiCare in *Rodney J. Landry, et al. v. Humana, Inc., et al.*, S.D. Florida, C.A. No. 1:00-1658 (S.D. Mississippi, C.A. No. 2:99-325), be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. §1407, the actions pending outside the Southern District of Florida and listed on the attached Schedules A (pertaining to MDL-1364), B (pertaining to MDL-1366) and C (pertaining to MDL-1367), be, and the same hereby are, TRANSFERRED to the Southern District of Florida, and, with the consent of that court, assigned to the Honorable Federico A. Moreno for coordinated or consolidated pretrial proceedings with the actions already pending there on Schedules A, B and C and/or in MDL-1334.

IT IS FURTHER ORDERED that the actions in MDL-1364, MDL-1366 and MDL-1367 are MERGED into MDL-1334 and that this entire litigation is accordingly renamed as follows: MDL-1334--In re Managed Care Litigation.

FOR THE PANEL:


John F. Nangle
Chairman

SCHEDULE A

MDL-1364 -- In re Health Care Providers/Managed Care Companies Litigation

Northern District of Alabama

Eugene Mangieri, M.D. v. Cigna Corp., et al., C.A. No. 7:99-3254

Northern District of California

Leonard J. Klay, M.D. v. Pacificare Health Systems, Inc., et al., C.A. No. 3:00-1890
California Medical Association v. Blue Cross of California, et al., C.A. No. 3:00-1894

Southern District of Florida

Charles B. Shane, M.D., et al. v. Humana Health Plan, Inc., et al., C.A. No. 1:00-2830
(W.D. Kentucky, C.A. No. 3:00-53)

Northern District of Georgia

H. Robert Harrison, et al. v. Aetna U.S. Healthcare, Inc., et al., C.A. No. 1:00-705
H. Harrison, et al. v. Coventry Healthcare of Georgia, Inc., et al.,
C.A. No. 1:00-1260
H. Robert Harrison, et al. v. United Healthcare of Georgia, Inc., et al.,
C.A. No. 1:00-1270
H. Robert Harrison, et al. v. Prudential Health Care Plan of Georgia, Inc., et al.,
C.A. No. 1:00-1319

SCHEDULE B

MDL-1366 -- In re Prudential Insurance Co. of America, Inc., Managed Care Litigation

Southern District of Florida

Raymond Williamson, III v. Prudential Insurance Co. of America,
C.A. No. 1:00-1334

Southern District of Mississippi

Raymond Williamson, III v. Prudential Insurance Co. of America, et al.,
C.A. No. 2:99-326

District of New Jersey

Jennifer McCarron, et al. v. Prudential Insurance Co. of America, et al.,
C.A. No. 1:00-1693

Eastern District of Pennsylvania

John Romero, et al. v. Prudential Insurance Co. of America, et al.,
C.A. No. 2:00-2592

SCHEDULE C

MDL-1367 -- In re Aetna Inc. Managed Care Litigation

Northern District of Alabama

Eugene Mangieri, M.D. v. Cigna Corp., et al., C.A. No. 7:99-3254

Northern District of California

Jeanne Curtright v. Aetna, Inc., et al., C.A. No. 4:99-5300

Southern District of Florida

Jo Ann O'Neill, et al. v. Aetna, Inc., et al., C.A. No. 1:00-1334

Southern District of Mississippi

Jo Ann O'Neill, et al. v. Aetna, Inc., et al., C.A. No. 2:99-284

District of New Jersey

Michael V. Amorosi v. Aetna, Inc., et al., C.A. No. 1:99-5666

Eastern District of Pennsylvania

Anthony Conte v. Aetna U.S. Healthcare, Inc., C.A. No. 2:99-4929

