

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-1334-MDL-MORENO

IN RE: MANAGED CARE LITIGATION

THIS DOCUMENT RELATES ONLY TO
PROVIDER TRACK CASES

CHARLES B. SHANE, M.D., et al.

Plaintiffs,

v.

HUMANA, INC.; AETNA, INC.; AETNA-USHC, INC.;
CIGNA; COVENTRY HEALTH CARE, INC.;
HEALTH NET, INC.; HUMANA HEALTH PLAN, INC.;
PACIFICARE HEALTH SYSTEMS, INC.; PRUDENTIAL
INSURANCE COMPANY OF AMERICA; UNITED HEALTH
GROUP; UNITED HEALTH CARE; WELLPOINT HEALTH
NETWORKS, INC.; AND ANTHEM, INC.

Defendants.

TIMOTHY N. KAISER, M.D., and SUZANNE LeBEL
CORRIGAN, M.D., on behalf of a class of others
similarly situated,

Plaintiffs,

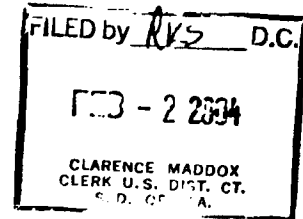
v.

CIGNA CORPORATION; CIGNA HEALTHCARE OF
ST. LOUIS, INC.; and CIGNA HEALTHCARE OF
TEXAS, INC.,

Defendants.

**ORDER APPROVING SETTLEMENT AMONG
CIGNA HEALTHCARE AND PHYSICIANS, CERTIFYING CLASS AND
DIRECTING ENTRY OF FINAL JUDGMENT**

The Court reviewed and considered the Settlement Agreement had a Fairness Hearing and



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considered the Settlement in the context of all prior proceedings. Accordingly, the Court enters the following findings of fact and conclusion of law.

1. The Court has jurisdiction over the subject matter of this Litigation pursuant to 28 U.S.C. §§ 1331 and 1367, and all acts within this Litigation, and over all the parties to this Litigation, including all members of the Class.

2. The Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes. Class Counsel and Class Representative Plaintiffs have fairly and adequately represented the Class for purpose of entering into and implementing the Settlement.

3. The notice provided to putative Class Members, including individual mailed notice to all putative Class Members who could be located with reasonable effort, notice by publication and website notice: (i) constituted the best notice practicable under the circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the putative Class Members of the pendency of the Litigation, their right to object and to appear at the Fairness Hearing or to exclude themselves from the Settlement, (iii) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice and (iv) fully complied with due process principles and Rule 23 of the Federal Rules of Civil Procedure.

4. The Settlement is the product of good faith, arms length negotiations between Class Representative Plaintiffs and the Signatory Medical Services and their counsel, on the one hand, and CIGNA HealthCare and its counsel, on the other hand.

5. The Settlement includes, among other things, the following types of relief for Class Members:

- Monetary relief to all Class Members, who may choose between (1) participating in a thirty million dollar (\$30,000,000) fund, to be distributed to claiming Class Members or alternatively, (2) seeking recovery from an uncapped fund for claims that were previously denied or reduced during the Claims Period on the basis of medical necessity, bundling or alleged downcoding or non-recognition of Modifiers.
- Fifteen million dollars (\$15,000,000) in initial funding provided by CIGNA HealthCare to establish a not-for-profit foundation dedicated to improving health care.
- Prospective initiatives and other commitments with respect to CIGNA HealthCare's business practices, including such issues as interest on late payment of claims, website disclosures and use of a negotiated Medical Necessity definition. This prospective relief is estimated to be valued between \$300 and \$400 million and is therefore substantial.

6. The Settlement is in all respects fair, reasonable, adequate and proper and in the best interest of the Class. In reaching this conclusion, the Court has considered a number of factors, including: a) an assessment of the likelihood that the Class Representative Plaintiffs would prevail at trial; b) the range of possible recovery available to such Plaintiffs as a result of such trial; c) the consideration provided to Class Members pursuant to the Settlement, as compared to the range of possible recovery, discounted for the inherent risk of litigation, including the risk of maintaining a class through trial and the risk to individual recovery in litigation posed by arbitration agreements; d) the complexity, expense and possible duration of such litigation in the absence of a settlement; e) the nature and extent of any objections to the Settlement; and f) the stage of proceedings at which the Settlement was reached. *See Bennett v. Behring Corp.*, 737 F.2D 982, 986 (11th Cir. 1984).

7. All Class Members who have not timely opted out shall be subject to all of the provisions of the Settlement, the Agreement, this Order and the Final Judgment to be entered by the Clerk of the Court.

8. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay in entering the Final Judgment.

CLASS CERTIFICATION

Wherefore the class is certified and the settlement is approved as fair, reasonable, adequate and in the best interests of the Class. The Court finds that the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure have been satisfied. The objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that each of the elements of Rules 23(a), 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure are satisfied, for purposes of settlement only, solely with respect to CIGNA HealthCare, as well as the other Released Persons. The Class is permanently certified as a class action, pursuant to Federal Rules of Civil Procedure 23(a),(b)(2) and (b)(3), on behalf of the following persons (the "Class"):

any and all Physicians, Physicians Groups and Physicians Organizations (and all Persons claiming by or through them, such as Physicians' Assistants and Advanced Practice Registered Nurses), who or which provided Covered Services to any CIGNA HealthCare member or any individual enrolled in or covered by a plan offered or administered by any Person named as a defendant in the *Shame* complaint of by any of their respective current or former Subsidiaries from August 4, 1990 through the date of the entry of the Preliminary Approval Order provided, however, that the Class shall not include any Physician who is or was an employee of a CIGNA HealthCare staff-model HMO at the time of providing such Covered Services.

The putative Class Members identified on the list attached to the Final Judgment as having timely and properly elected to Opt Out from the Settlement and the Class are excluded from the Class and

shall not be entitled to any of the monetary or other benefits afforded to the Class Members under the Agreement. The Court finds that the proposed Class satisfied Rule 23(a) of the Federal Rules of Civil Procedure in that:

- A. The Class, which consists of hundreds of thousands of Physicians, Physician Groups and Physician Organizations, is so numerous that joinder of all Persons who fall within the class definition is impracticable;
- B. The commonality requirement is satisfied where members of the Class share at least one common legal or factual issue. Here, there are questions of law common to the Class, including allegations under RICO and other causes of action as set forth in the Plaintiffs' Third Amended Complaint in *Kaiser* and in the Second Amended Consolidated Class Action Complaint in *Shane*. There were also questions of fact common to the Class, including certain factual issues related to whether computer systems were inadequate and whether computer programs were systematically used to improperly deny or delay payment for health care services furnished by members of the Class;
- C. The claims of the Class representatives are typical of the claims of the Class; and
- D. The Class representatives will fairly and adequately protect the interests of the Class and are represented by qualified counsel who are competent to represent the Class and prosecute this Litigation.

The Court further finds that the proposed Class satisfies Rule 23(b)(2) of the Federal Rules of Civil Procedure in that CIGNA HealthCare is alleged to have acted on grounds generally applicable to the Class as a whole, thereby making appropriate final injunctive relief with respect to the Class as a whole. The Court notes that the terms of the Agreement include substantial prospective relief.

The Court further finds that the proposed Class satisfies Rule 23(b)(3) of the Federal Rules

of Civil Procedure which requires that common issues predominate and that a class action is superior to other available methods for the fair and efficient resolution of this controversy. The Court finds that the terms of the Agreement include procedures for resolving claim disputes, including mechanisms for independent external review and other independent decision-makers, that absolves individual Class Members, for example, from having to prove, pursuant to RICO, that they relied to their detriment on alleged misrepresentations and nondisclosures, with the result that the Court need not resolve many individual factual and legal issues that might otherwise arise. The Court further finds that because the Litigation is being settled, rather than litigated, it need not consider the manageability issues that would be presented by a nationwide class litigation with respect to such individualized issues. *Amchem Prods., Inc. v. Windsor*, 117 S.Ct. 2231, 2240 (1997). Against this background, and in light of the Complaints' allegations of systematic computer and claims processing issues, the Court finds that common issues predominate and that a class action is superior to other available methods for the fair and efficient resolution of this controversy.

In making the superiority determination, the Court has considered, among other things, (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class; and (c) the desirability of concentrating the litigation of the claims in this particular forum.

For purposes of the Settlement only, those identified in the Agreement as Class Representative Plaintiffs are certified as representatives of the Class (except that Dr. Timothy N. Kaiser, who did not execute the Agreement, is not certified as a Class Representative); and Class Counsel is appointed counsel to the class. The Court concludes that Class Counsel and Class

Representative Plaintiffs have fairly and adequately represented the Class with respect to the Settlement of the Agreement.

Notwithstanding the certification of the Class and appointment of Class representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Agreement is terminated or is not consummated for any reason, the foregoing certification of the Class and appointment of Class representatives shall be void and of no further effect and the Settling Parties shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the Settling Parties might have asserted but for the Agreement, and provided that in such circumstances any further ruling by this Court or an appellate court on the propriety of this Court's order dated September 26, 2002 certifying classes in *Shane v. Humana, Inc., et al.*, Master File No. 00-1334-MD-MORENO, shall apply to the Released Persons as if the Released Persons had participated in further proceedings with respect to that Order.

RELEASE AND INJUNCTIONS AGAINST RELEASED CLAIMS

The "Released Persons," which shall include CIGNA HealthCare, and CIGNA HealthCare's insurers and counsel, including Defendants' Counsel, Persons who provided claim processing services, software, proprietary guidelines or technology to CIGNA HealthCare, and those contracted agents processing claims on CIGNA HealthCare's behalf, together with each such Person's predecessors or successors, but only to the extent of such Person's services or work done pursuant to contract with CIGNA HealthCare, but excluding all Delegated Entities, shall be fully, finally, and forever, remised, released, relinquished, compromised, and forever discharged by all Class Members, and, in accordance with the procedures set forth in the Preliminary Approval Order and, to the extent they have claims against CIGNA HealthCare derived by contract or operation of law from the claims

of Class Members, any and all Subsidiaries, affiliates, shareholders, parents, directors, officers, employees, professional corporations, agents, administrators, executors, legal representatives, partners and partnerships, heirs, predecessors, successors and assigns of Class Members (collectively, the "Releasing Parties") from any and all claims that have been or could have been asserted by or on behalf of any or all Class Members against the Released Persons, or any of them, and which arise prior to Final Approval by reason of, arising out of, or in any way related to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referred to in the Litigation, except as otherwise provided for by the Agreement. This includes, without limitation as to Released Persons only, any suspect of any Fee for Service Claim submitted by any Class Member to CIGNA HealthCare, and claims based upon a capitation agreement with CIGNA HealthCare, and any allegation that Defendants and/or CIGNA HealthCare have conspired with, aided and abetted, or otherwise acted in concert with other managed care organizations, other health insurance companies, and/or other third parties with regard to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referred to in the Litigation or with regard to CIGNA HealthCare's liability for any other demands for payment submitted by an Class Member to such other managed care organizations, health insurance companies, and/or other third parties ("Related Claims"). Notwithstanding this definition, Released Claims do not include any claims 1) that a non-physician health care Person may have for the provision of Covered Services to any CIGNA HealthCare Member (or any individual enrolled in or covered by a plan offered or administered by any Person named as a defendant in the *Shane* complaint) other than those claims by such non-physician health care Person submitted by or through a Physician, Physician Group or Physician Organization; and

2) arising out of the alleged nonpayment or payment at inappropriate rates or amounts of fee for service claims submitted to CIGNA HealthCare for services or supplies not represented by CPT® Codes or HCPCS Level II Codes or codes specially created by CIGNA HealthCare (such as its “well woman” code, code 90769); and provided further that the Releasing Parties shall not be deemed to have released claims for payments (each a “Retained Claim” and, collectively, the “Retained Claims”) for Covered Services provided to CIGNA HealthCare Members prior to or on the date of Final Approval as to which, as of Final Approval, (i) no claim with respect to such Covered Services has been filed with CIGNA HealthCare; provided that the contractual period for filing such claim has not elapsed; or (ii) a claim with respect to such Covered Services has been filed with CIGNA HealthCare but such claim has not been finally adjudicated by CIGNA HealthCare, as provided for in Section 13.4 of the Agreement.

In addition to the Released Claims, the Releasing Parties are deemed to have covenanted and agreed not to sue with respect to, or assert, against any Released Person, in any forum (i) the Released Claims, (ii) any Retained Claim, (iii) any dispute subject to Section 7.12 of the Agreement, or (iv) any Compliance Dispute, which, as to the latter three, shall be asserted and pursued, respectively, only pursuant to the provisions of Section 7.10, Section 7.12 and Section 15.2 of the Agreement. The covenant not to sue shall not apply to any claims that arise within twenty (20) days before the Termination Date that could not reasonably be presented or resolved pursuant to the procedures set forth in Section 15 of the Agreement; provided that any such claim shall be prosecuted on an individual basis only and not otherwise.

Nothing in the Agreement is intended to relieve any Person that is not a Released Person from responsibility for its own conduct or conduct of other Persons who are not Released Persons,

or to preclude any Plaintiff from introducing any competent and admissible evidence to the extent consistent with the Agreement. Moreover, nothing in the Agreement prevents the Plaintiffs and the Class from pursuing claims to hold any person or party that is not a Released Person liable for damages caused by any Released Person.

With respect to the Released Claims, Releasing Parties are hereby deemed expressly to have waived and relinquished to the fullest extent permitted by law (a) the provisions, rights, and benefits conferred by Section 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 (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

The Releasing Parties are permanently enjoined from: (a) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Persons, and (b) instituting, organizing class members in, joining with class members in, amending a pleading in or soliciting the participation of class members in, any action, including but not limited to a purported class action, in any court against one or more Released Persons based on, involving, or incorporating, directly or indirectly, any or all Released Claims, and (c) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or

regulatory proceeding or order in any jurisdiction based on an allegation that CIGNA HealthCare's compliance with the provisions of the Agreement violates any legal right of any member of the Class.

In contemplation of the Settlement as to Physicians and the dismissal with prejudice of Released Claims as to Defendants and CIGNA HealthCare, after this Order becomes final, all proceedings are stayed as to Defendants and CIGNA HealthCare or any other Released Person who is a defendant in any action brought by or on behalf of Class Members that assert any claim that as of the date of this Order would constitute a Released Claim that has been, or will in the future, be consolidated with the Provider Tack Actions under MDL Docket No. 1334, *provided, however*, that this stay in contemplation of dismissal shall not apply to any such action to the extent that a named plaintiff has timely elected to Opt Out of the Settlement and the Class.

In accordance with the terms of the Agreement, the Releasing Parties and Class Counsel are barred from pursuing discovery in this Litigation against CIGNA HealthCare or the other Released Persons, except for authentication of CIGNA HealthCare's claims databases and documents which Class Counsel shall first seek through stipulation. CIGNA HealthCare shall have the right to object to any discovery of third parties that relates solely to CIGNA HealthCare.

ATTORNEYS' FEES

The Court has reviewed the application for an award of fees, costs and expenses submitted by Class Counsel and the exhibits, memoranda of law and other material submitted in support of that application. The Court recognizes that in the Agreement CIGNA HealthCare has agreed not to oppose an award of fees, costs and expenses to Class Counsel and Kaiser Counsel up to Fifty-Five Million Dollars (\$55,000,000), to be paid by CIGNA HealthCare up to that amount. This agreement

is in addition to the monetary consideration and other benefits to be provided to Class Members under the Agreement. On the basis of its review of the foregoing, the Court hereby awards fees and expenses to Class Counsel in the aggregate amount of \$55,000,000, to be paid by CIGNA HealthCare in accordance with the provisions of the Agreement. The Court expressed strong reservation about the propriety of Kaiser Counsel fees. Recent pleadings add concern to the Court's original reservation. Therefore, the Court will determine the allocation of the \$55 million through a separate order. In determining an appropriate fee, the Court is cognizant that even in settled cases the fee must be reasonable. Normally the amount of client recovery is the most important determinant of the reasonableness of the attorney fee award. The Court has considered that factor as well as the Lodestar calculation (hours times hourly rate) and the presence of high risk.

The Court has also reviewed the application for incentive awards to Representative Class Plaintiffs for their services as Class representatives. The Court recognizes that in the Agreement CIGNA HealthCare has agreed not to oppose an incentive award up to Seven Thousand Five Hundred Dollars (\$7,500) for each Class Representative Plaintiff, to be paid by CIGNA HealthCare up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to Class Members under the Agreement. On the basis of its review of the foregoing, the Court hereby awards a fee of \$7,500 to each Class Representative Plaintiff, to be paid by CIGNA HealthCare in accordance with the provisions of the Agreement.

OTHER PROVISIONS

Neither the Agreement nor any statement in connection with it shall be construed as an admission or concession on the part of the Class Representative Plaintiffs, The Signatory Medical Societies, Class Counsel, Kaiser Counsel, any Class Member, CIGNA HealthCare, or any other

person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Litigation are or are not meritorious, and this Order, the Agreement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Class Representative Plaintiffs, the Signatory Medical Societies, any Class Member or any other Person has or has not suffered any damage; *provided, however*, that the Agreement, this Order and the Final Judgment to be entered thereon may be filed in any action by CIGNA HealthCare, Defendants or any Released Persons seeking to enforce the Agreement of the Final Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The terms of the Agreement and of this Order and the Final Judgment shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims that are maintained by, or on behalf of, the Releasing Parties or any other Person subject to those provisions of this Order.

In the event the Agreement does not become effective or is canceled or terminated in accordance with the terms and provisions of the Agreement, then this Order and the Final Judgment shall be rendered null and void and be vacated.

ENTRY OF FINAL JUDGMENT: CONTINUING JURISDICTION

The Clerk of the Court is directed to enter the Final Judgment in the form attached to this Order dismissing all Released Claims with prejudice as to CIGNA HealthCare pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Without in any affecting the finality of this Order and the Final Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Agreement and (b) the enforcement of the injunctions described in paragraph 9 of this Order.

DONE and ORDERED this 30th day of January, 2004 in Miami, Dade County, Florida.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

All counsel listed on Service List