

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**MDL NO.: 1334  
MASTER FILE NO.: 00-1334MD-MORENO**

IN RE:  
MANAGED CARE LITIGATION

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THIS DOCUMENT RELATES TO  
**PROVIDER TRACK CASES ONLY**

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**ORDER APPROVING SETTLEMENT, CERTIFYING CLASS  
AND DIRECTING ENTRY OF FINAL JUDGMENT**

The Court having reviewed and considered the Joint Motion for Final Approval of Settlement Concerning Claims Against Defendants Aetna Inc. and Aetna U.S. Healthcare, Inc. dated May 21, 2003 in the action styled Shane v. Humana, Inc., et al., Master File No. 00-1334-MD-MORENO (the “Action”), and having reviewed and considered the terms and conditions of the proposed settlement (the “Settlement”) as set forth in the Settlement Agreement dated May 21, 2003 (the “Settlement Agreement”), a copy of which has been submitted to the Court, and having reviewed and considered the applications of Class Counsel for an award of attorneys’ fees and expenses and for an award of fees to Representative Plaintiffs, and the Court having held a Settlement Hearing after being satisfied that notice to the Class had been provided in accordance with the Court’s Order Preliminarily Approving Proposed Settlement, Setting Form and Content

of Notice to the Class and Scheduling Settlement Hearing entered on \_\_\_\_\_, 2003 (the “Preliminary Approval Order”), and the Court having taken into account the objections submitted prior to the Settlement Hearing in accordance with the provisions of the Preliminary Approval Order and the presentations and other proceedings at the Settlement Hearing, and having considered the Settlement in the context of all prior proceedings had in this consolidated multi-district litigation, the Court makes the following FINDINGS:

A. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

B. Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

C. Notice to members of the Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice constitutes the best means of notice to members of the Class that is practicable under the circumstances and is due and sufficient notice of the Settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the Settlement or the Settlement Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

D. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Settlement, has been advised of all objections to the Settlement and has given fair consideration to such objections.

E. The Settlement is the product of good faith, arm's length negotiations between Representative Plaintiffs and the Signatory Medical Societies and their counsel, on one hand, and Aetna-U.S. Healthcare Inc., now known as Aetna Inc., a 2 Pennsylvania corporation ("Aetna"), and Aetna Inc., a Connecticut corporation ("Old Aetna"), on the other hand.

F. The Settlement, as provided for in the Settlement Agreement, 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: (i) an assessment of the likelihood that the Representative Plaintiffs and/or the Class would prevail at trial; (ii) the range of possible recovery available to such plaintiffs as a result of such a trial; (iii) the consideration provided to members of the Class pursuant to the Settlement, as compared to the range of possible recovery discounted for the inherent risks of litigation; (iv) the complexity, expense and possible duration of such litigation in the absence of a settlement; (v) the nature and extent of any objections to the Settlement; and (vi) the stage of proceedings at which the Settlement was reached. See Bennett v. Behring Corp., 737 F. 2d 982, 986 (11th Cir. 1984).

G. A list of those members of the Class who have timely elected to opt-out of the Settlement and the Class and who therefore are not bound by the Settlement, the provisions of the Settlement Agreement, this Order and the Judgment to be entered by the Clerk of the Court hereon, has been submitted to the Court as an exhibit to the Affidavit of \_\_\_\_\_ sworn to on \_\_\_\_\_, 2003. A copy of such exhibit is attached hereto and incorporated by reference herein. All other members of the Class (as permanently certified below) shall be

subject to all of the provisions of the Settlement, the Settlement Agreement, this Order and the Judgment to be entered by the Clerk of the Court.

H. The bar order provision of this Order, which prohibits the assertion of claims against the settling-defendants and the other Released Parties, as set forth below, is a condition of the Settlement and a significant component of the consideration afforded to Aetna and Old Aetna in the Settlement, and that provision is reasonable under the circumstances. Supporting this conclusion is the fact that as an express term of that provision, the persons who are enjoined from asserting any claims against any of the Released Parties will not face any liability in the Action based on the conduct of the Released Parties.

I. The dismissal with prejudice and entry of Judgment contemplated by the Settlement and this Order will dispose of fewer than all of the claims at issue, or parties to, this Action. The Court finds that there is no just reason for delay in entering judgment in the form attached hereto (the “Judgment”) dismissing the Action with prejudice as to Aetna and Old Aetna and that entry of the Judgment to that effect, as directed below, is warranted under Rule 54(b) of the Federal Rules of Civil Procedure.

On the basis of the foregoing findings and the submissions and proceedings referred to above, **NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED:**

Certification of Class and Approval of Settlement

1. The Settlement and the Settlement Agreement are hereby approved as fair, reasonable, adequate and in the best interests of the Class, and the requirements of due process

and Rule 23 of the Federal Rules of Civil Procedure have been satisfied. The objections to the Settlement and the Settlement Agreement are overruled and denied in all respects.

2. The Court having found that each of the elements of Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure are satisfied, for purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), solely with respect to defendants Aetna and Old Aetna, as well as the other Released Parties, the Action is permanently certified as a class action on behalf of the following persons (the “Class”):

any and all Physicians, Physicians Groups and Physician Organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, Old Aetna, any other entity named as a defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, from August 4, 1990 through and including \_\_\_\_\_, 2003 (the date of entry of the Preliminary Approval Order).

The persons identified on the list submitted to the Court (and attached hereto as an exhibit) as having timely and properly elected to opt-out from the Settlement and the Class are hereby excluded from the Class and shall not be entitled to any of the monetary or other benefits afforded to the Class under the Settlement Agreement. The Court notes that because this certification of the Class is in connection with the Settlement rather than litigation, the Court need not resolve the issues of manageability presented by certification of the nationwide class proposed in the complaint in the Action.

3. For purposes of the Settlement only, Representative Plaintiffs are certified as representatives of the Class and Class Counsel is appointed counsel to the Class. The Court

concludes that Class Counsel and Representative Plaintiffs have fairly and adequately represented the Class with respect to the Settlement and the Settlement Agreement.

4. Notwithstanding the certification of the foregoing Class and appointment of class representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement 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 parties to the Settlement shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement 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 a class in the Action shall apply to Aetna and Old Aetna as if those defendants had participated in further proceedings with respect to that Order.

#### Release and Injunctions Against Released Claims

5. The "Released Parties," which shall include Aetna and each of its present and former parents, present and former wholly-owned subsidiaries, present and 6 former divisions and affiliates (including without limitation Lion Connecticut Holdings, Inc. (formerly Old Aetna) and each of its subsidiaries as of December 14, 2000) and each of their respective current or former officers, directors, employees, and attorneys (and the predecessors, heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing), but excluding all Delegated Entities and the Prudential Insurance Company of America, shall be

released and forever discharged by the Signatory Medical Societies and all members of the Class who have not validly and timely elected to opt-out of- the Settlement and the Class in accordance with the procedures set forth in the Preliminary Approval Order, and by their respective heirs, executors, agents, legal representatives, professional corporations, partnerships, assigns, and successors, but only to the extent such claims are derived by contract or operation of law from the Claims of Class Members (collectively, the “Releasing Parties’ from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities and demands of whatever kind or character (each a “Claim”), arising on or before the date of entry of the Preliminary Approval Order, that are, were or could have been asserted against any of the Released Parties based on or arising from the factual allegations of the complaint in the Action,. whether any such Claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons (the “Released Claims”). Notwithstanding the foregoing, the Releasing Parties shall not be deemed to have released claims for payment (the “Retained Claims”) for Covered Services as to which, as of the date of entry of this Order, (i) no claim with respect to such Covered Services has been filed with Company, 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 Company but such claim has not been finally adjudicated by Company; as provided for in section 13(d) of the Settlement Agreement.

6. In addition to the Released Claims, the Releasing Parties shall be deemed to have discharged any and all claims that exist now or that might arise in the future against any other persons or entities, which claims arise from, or are based on, conduct by any of the

Released Parties that occurred on or before \_\_\_\_\_, 2003 (the date of the Preliminary Approval Order) and are, or could have been, alleged in the complaint in the Action, whether any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other persons or entities. Nothing in this paragraph or in the Settlement Agreement is intended to relieve any person or entity that is not a Released Party from responsibility for its own conduct or the conduct of other persons or entities who are not Released Parties.

7. With respect to the Released Claims and the claims described in paragraph 6 of this Order, each member of the Class that has not timely elected to opt-out of the Settlement and the Class is hereby deemed expressly to have waived and released any and all provisions, rights and benefits conferred either (a) by California Civil Code § 1542, which reads:

Section 1542. General release; extent. 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.

or (b) by any law of any state or territory of the United States, or principle of common law, which is similar to § 1542 of the California Civil Code.

8. 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 Parties; (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 Parties 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 Company's compliance with the provisions of the Settlement Agreement violates any legal right of any member of the Class.

9. All persons, including without limitation all defendants named in the complaint other than Aetna and Old Aetna, who are, have been, could be, or could have been alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with the Released Parties or any of them respecting the Released Claims or any of them, are hereby, to the maximum extent permitted by law, barred and permanently enjoined from instituting, commencing, prosecuting, participating in or continuing any claim, claim-over, cross-claim, action, or proceeding, however denominated, regardless of the allegations, facts, law, theories or principles on which they are based, in this Court or in any other court or tribunal, against the Released Parties or any of them with respect to the Released Claims, including without limitation equitable, partial, comparative, or 9 complete contribution, set-off, indemnity or otherwise, whether by contract, common law or statute, arising out of or relating in any way to the Released Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged, satisfied, and made unenforceable to the maximum extent permitted by law, and no such claim may be commenced, maintained, or prosecuted against Aetna, Old Aetna or any Released Party. As consideration for the foregoing relief, the Settlement Agreement and paragraph 6 of this

Order relieve the parties who are so enjoined from any liability in the Action based on the conduct of the Released Parties.

10. In contemplation of the dismissal with prejudice of such actions after this Order becomes final, all proceedings are stayed as to Aetna, Old Aetna or any other Released Party who is a defendant in any action brought by or on behalf of members of the Class that asserts any claim that as of the date of this Order would constitute a Released Claim that has been, or will in the future be assigned to this Court 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.

11. In accordance with the terms of the Settlement Agreement, the Releasing Parties and Class Counsel are barred from pursuing discovery in the Action against Aetna, Old Aetna or the other Released Parties.

Applications for Attorneys' Fees and Representative Plaintiff Fees

12. The Court has reviewed the application for an award of fees and expenses submitted by Class Counsel and the exhibits, memoranda of law and other materials submitted in support of that application. The Court recognizes that in the Settlement Agreement Aetna has agreed not to oppose an award of fees and expenses to Class Counsel up to \$\_\_\_\_\_, to be paid by Aetna up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to members of the Class under the Settlement 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 \$ \_\_\_\_\_, to be paid by Aetna in accordance with the provisions of the Settlement Agreement.

13. The Court has also reviewed the application for a fee award to Representative Plaintiffs. The Court recognizes that in the Settlement Agreement Aetna has agreed not to oppose an award of fees up to \$7,500.00 for each Representative Plaintiff, to be paid by Aetna up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to members of the Class under the Settlement Agreement. On the basis of its review of the foregoing, the Court hereby awards a fee of \$ \_\_\_\_\_ to each - Representative Plaintiff, to be paid by Aetna in accordance with the provisions of the Settlement Agreement.

#### Other Provisions

14. Aetna and Old Aetna are hereby permanently relieved from any and all obligations under the Agreed Order For Preservation of Records entered in this Action on January 12, 2001.

15. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, the Signatory Medical Societies, Class Counsel, any members I1 of the Class, Aetna, Old Aetna 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 Action are or are not meritorious, and this Order, the Settlement 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 Representative Plaintiffs, the Signatory Medical Societies, any member of the Class or any other person has or has not suffered any damage; *provided, however*, that the Settlement Agreement, this Order and the Judgment to be entered thereon may be filed in any action by Aetna, Old Aetna or any Released Party seeking to enforce the Settlement Agreement or the 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 Settlement Agreement and of this Order and the Judgment shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that are subject to the Release and other prohibitions that are set forth in paragraphs 5, 6, 8 and 9 of this Order that are maintained by, or on behalf of, the Releasing Parties or any other Person subject to those provisions of this Order.

16. In the event that the Settlement Agreement does not become effective or is canceled or terminated in accordance with the terms and provisions of the Settlement Agreement, then this Order and the Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void.

Entry of Judgment; Continuing Jurisdiction

17. The Clerk of the Court is directed to enter the Judgment in the form attached to this Order dismissing the Action with prejudice as to Aetna and Old-Aetna pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

18. Without in any way affecting the finality of this Order and the Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Settlement Agreement and (b) the enforcement of the injunctions described in paragraphs 8 and 9 of this Order. In accordance with the terms of the Settlement Agreement, in any future dispute concerning the negotiation, approval, performance or alleged breach of the Settlement Agreement that may arise between or among the parties to the Settlement Agreement, the court shall award attorneys' fees and costs to the prevailing party.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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U.S.DJ.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**MDL NO.: 1334  
MASTER FILE NO.: 00-1334MD-MORENO**

IN RE:  
MANAGED CARE LITIGATION

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THIS DOCUMENT RELATES TO  
**PROVIDER TRACK CASES ONLY**

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CHARLES B. SHANE, M.D.; JEFFREY BOOK, D.O.;  
MICHAEL BURGESS, M.D.; H. ROBERT HARRISON, M.D.;  
GLENN L. KELLY, M.D.; LEONARD J. KLAY, M.D.;  
EUGENE MANGIERE, M.D.; KEVIN MOLK, M.D.;  
MARTIN MORAN, M.D.; MANUEL PORTH, M.D.;  
THOMAS BACKER, M.D.; DAVID BOXSTEIN, M.D.;  
SUSAN HANSEN, M.D.; ANDRES TALEISNIK, M.D.;  
JULIO TALEISNIK; M.D.; ROGER WILSON, M.D.;  
NAVID GHALAMBOR, M.D.; CALIFORNIA MEDICAL  
ASSOCIATION; TEXAS MEDICAL ASSOCIATION;  
MEDICAL ASSOCIATION OF GEORGIA; FLORIDA  
MEDICAL ASSOCIATION; LOUISIANA STATE  
MEDICAL SOCIETY; and DENTON COUNTY  
MEDICAL SOCIETY,

Plaintiffs,

vs.

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; and ANTHEM, INC.,

Defendants.

## **JUDGMENT**

In accordance with, and for the reasons set forth in, the Order Approving Settlement, Certifying Class and Directing Entry of Final Judgment entered on 2003 (the “Older”), this Action is dismissed with prejudice as to defendants Aetna Inc., a Connecticut corporation and Aetna U.S. Healthcare, Inc., (now known as Aetna Inc.) a Pennsylvania corporation pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Miami, Florida  
\_\_\_\_\_, 2003

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Clerk of the Court