

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MDL NO.: 1334

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 JUDGMENT

The Court reviewed and considered the terms and conditions of the
proposed Settlement as set forth in the Settlement Agreement Among CIGNA
HealthCare and Physicians dated September 4, 2003 (the "Agreement"), and having

EXHIBIT 3

reviewed and considered the applications of Class Counsel for an award of attorneys' fees, costs and expenses and for incentive awards to Class Representative Plaintiffs, and the Court having held a Fairness Hearing after being satisfied that notice to the Class has been provided in accordance with the Court's Order Preliminarily Approving Proposed Settlement Among CIGNA HealthCare and Physicians entered on _____, 2003 (the "Preliminary Approval Order"), and the Court having taken into account the objections submitted prior to the Fairness Hearing in accordance with the provisions of the Preliminary Approval Order and the presentations and other proceedings at the Fairness Hearing, and having considered the Settlement in the context of all prior proceedings had in this Litigation, the Court enters the following FINDINGS and CONCLUSIONS:

- A. Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Agreement.
- B. 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.
- C. 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 purposes of entering into and implementing the Settlement.
- D. The Court finds that 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.

E. The Court has held a Fairness 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.

F. The Settlement is the product of good faith, arm's length negotiations between Class Representative Plaintiffs and the Signatory Medical Societies and their counsel, on the one hand, and CIGNA HealthCare and its counsel, on the other hand.

G. The Settlement, as provided for in the 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 Class 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 trial; (iii) 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; (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).

H. All objections to the Settlement are overruled and denied in all respects.

I. A complete list in machine readable form of those putative Class Members who have timely elected to Opt Out of the Settlement and the Class (and have not revoked that election) and who therefore are not bound by the Settlement, the provisions of the 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 or Declaration of _____, filed at the Fairness Hearing by the Settlement Administrator. A copy of such exhibit is attached to the Judgment and is also incorporated by reference herein. All Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, the Agreement, this Order and the Judgment to be entered by the Clerk of the Court.

J. 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 Litigation. 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 Judgment in the form attached hereto.

On the basis of the foregoing findings and conclusions and 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 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 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, 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, Physician Groups and Physician 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 *Shane* complaint or 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 submitted to the Court (attached to the Judgment as an exhibit and incorporated herein by reference) 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 Members under the Agreement. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of the requirements of Rule 23(a) and Rules 23(b)(2) and 23(b)(3) set forth in the Preliminary Approval Order and notes again 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 Settlement.

3. For purposes of the Settlement only, those identified in the Agreement as Class 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 Class Representative Plaintiffs have fairly and adequately represented the Class with respect to the Settlement and the 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 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

5. 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 aspect 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 any Class Member to such other managed care organizations, health insurance companies, and/or other third parties ("Released Claims"). Notwithstanding this definition, Released Claims do not include any and all claims of any kind whatever 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 payment (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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 Track 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.

11. 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.

Applications for Attorneys' Fees, Costs and Expenses and
Representative Plaintiff Incentive Awards

12. The Court has reviewed the application for and award of fees, costs 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 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 (\$55,000,000.00), 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 and Kaiser Counsel in the aggregate amount of \$ _____, to be paid by CIGNA HealthCare in accordance with the provisions of the Agreement.

13. 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 (\$7,500.00) 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 \$ _____ to each Class Representative Plaintiff, to be paid by CIGNA HealthCare in accordance with the provisions of the Agreement.

Other Provisions

14. Neither the 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 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 Judgment to be entered thereon may be filed in any action by CIGNA HealthCare, Defendants or any Released Persons seeking to enforce the 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 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 as to Released Claims 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.

15. 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 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

16. The Clerk of the Court is directed to enter the 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.

17. 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 Agreement and (b) the enforcement of the injunctions described in paragraph 9 of this Order.

SO ORDERED this ____ day of _____, ____.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE