

Miami Division

MDL NO.: 1334

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

IN RE:
MANAGED CARE LITIGATION

THIS DOCUMENT RELATES TO
PROVIDER TRACK CASES ONLY

**ORDER APPROVING SETTLEMENT AMONG PRUDENTIAL AND
PHYSICIANS, PHYSICIAN GROUPS AND PHYSICIAN ORGANIZATIONS,
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 Defendant The Prudential Insurance Company of America dated _____, 2005 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 _____, 2005 (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 Among Prudential and Physicians, Physician Groups and Physician Organizations, Setting Form and Content of Notice to the Class and Scheduling Settlement Hearing entered on _____, 2005 (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 jurisdiction over the subject matter of this Action pursuant to 28 U.S.C. §§ 1331 and 1367, and all acts within this Action, and over all the parties to this Action, and all members of the Class.

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: (i) constituted the best notice to members of the Class that was practicable under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object and to appear at the Settlement Hearing or to exclude themselves from the Settlement, and the binding effect of a class judgment; (iii) was reasonable and constituted due, adequate and sufficient notice to persons entitled to be provided with notice; and (iv) fully complied 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 The Prudential Insurance Company of America ("Prudential"), 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 _____, 2005. 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 Prudential and the other Released Parties, as set forth below, is a condition of the Settlement and a significant component of the consideration afforded to Prudential in the Settlement, and that provision is reasonable under the circumstances.

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

Prudential 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 the 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 Rule 23(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) and (b)(3), solely with respect to defendant Prudential, 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, Physician Groups and Physician Organizations who provided Covered Services to any Plan Member or any other individual enrolled in or covered by a plan offered or administered by any Person named as a defendant in the Complaint or by any of their respective current or former subsidiaries or affiliates, in each case from August 4, 1990 through and including _____ 2005 (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 readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of the

requirements of Rule 23(a) 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 address 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.

Release and Injunctions Against Released Claims

5. The "Released Parties," which shall include: (a) Prudential and each of its Affiliates (which include present and former parents, subsidiaries, divisions and affiliates and any and all of their respective current or former officers, directors, employees, insurers and attorneys, together with each such individual's or entity's predecessors and successors); and (b) Persons who or which provided claims processing services, software, proprietary guidelines or technology to Prudential or its Affiliates, and those contracted agents processing claims on their behalf, together with each such Person's predecessors or successors, but only to the extent of such Person's services and

work done pursuant to contract with Prudential or its Affiliates, but excluding all delegated entities, shall be fully, finally, and forever remised, released, relinquished, compromised and discharged by the Signatory Medical Societies, Representative Plaintiffs and all Class Members who have not submitted a valid and timely Opt-Out, and any and all subsidiaries, affiliates, members, shareholders, parents, directors, officers, employees, professional corporations, agents, administrators, executors, legal representatives, partners and partnerships, heirs, predecessors, successors and assigns of such Class Members, to the extent such persons or entities have claims against Prudential or its Affiliates derived by contract or operation of law from the claims of such Class Members, Representative Parties and Signatory Medical Societies (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 the Preliminary Approval Date and which arise out of or relate to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referred to in the Action, except as otherwise provided for in the Settlement Agreement. This includes, without limitation and as to Released Persons only, any aspect of any Fee for Service Claim submitted by any Class Member to Prudential or its Affiliates, and any claims of any Class Member related to or based upon any Capitation agreement between Prudential or its Affiliates and any Class Member or other person or entity, or the delay, nonpayment or amount of any Capitation payments by Prudential or its Affiliates, and any allegation that Defendants and/or Prudential or its Affiliates have conspired with, aided and abetted, or otherwise acted in concert with other managed care organizations, other health insurance companies, delegated entities 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 Action, or with regard to

Prudential or its Affiliate's liability for any other demands for payment submitted by any Class Member to such other managed care organizations, health insurance companies, delegated entities and/or other third parties (the "Released Claims").

6. 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 Prudential or its Affiliate's compliance with the provisions of the Settlement Agreement violates any legal right of any member of the Class.

7. Nothing 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, or to preclude any plaintiff from introducing any competent and admissible evidence to the extent consistent with the Settlement. Moreover, nothing in the Settlement 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 described in paragraph 5 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 – Claims Extinguished.
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 federal law, 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.

9. All Persons, including without limitation all defendants named in the complaint other than Prudential, 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 complete contribution, indemnity or otherwise (where the alleged injury arises from or relates to liability to a Class Member with respect to the Released Claims), 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 Prudential or any Released Party. Any judgment or award obtained by a Class Member against any such defendant or third party shall be reduced by the amount or percentage, if any, necessary under applicable law to

relieve Prudential or any Released Party of all liability to such defendants or third parties on such barred claims. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law as determined by the Court to compensate such defendants or third parties for the loss of any such barred claims against Prudential or any Released Party. Where the claims of a person who is, has been, could be, or could have been alleged to be a joint tortfeasor, co-tortfeasor, co-conspirator or co-obligor with a Released Party respecting the Released Claims have been barred and permanently enjoined by this paragraph 9, the claims of Released Parties against that person respecting those Released Claims are similarly fully and finally barred, released, extinguished, discharged, satisfied and made unenforceable to the maximum extent permitted by law.

10. In contemplation of the Settlement and the dismissal with prejudice of Released Claims as to Prudential after this order becomes final, all proceedings are stayed as to Prudential 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 Prudential or the other Released Parties. Prudential shall have the right to object to any discovery of third parties that relates solely to Prudential.

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 Prudential has agreed not to oppose an award of fees and expenses to Class Counsel up to Five Million Dollars (\$5,000,000.00), to be paid by Prudential 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 Prudential 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 Prudential has agreed not to oppose an award of fees up to Seven Thousand Five Hundred Dollars (\$7,500.00) for each Representative Plaintiff, to be paid by Prudential 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 Prudential in accordance with the provisions of the Settlement Agreement.

Other Provisions

14. Prudential is 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 of the Class, Prudential 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 Prudential 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 through 6 and 8 through 11 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 all Released Claims with prejudice as to Prudential 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 6 and 9 of this Order.

SO ORDERED this ____ day of _____, 2005.

HON. FEDERICO A. MORENO
UNITED STATES DISTRICT COURT