

*McKenna*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOC #:  
DATE FILED: 1/4/2010

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THE AMERICAN MEDICAL ASSOCIATION, :  
et al., :  
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Plaintiffs, :  
 :  
-against- :  
UNITED HEALTHCARE CORPORATION, :  
et al., :  
 :  
Defendants. :  
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Master File No.  
00 Civ. 2800 (LMM)  
(GWG)

**SUPPLEMENTAL ORDER PRELIMINARILY APPROVING PROPOSED  
SETTLEMENT, CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS,  
SETTING FORM AND CONTENT OF NOTICE TO MEMBERS OF THE  
SETTLEMENT CLASS, AND SCHEDULING FINAL SETTLEMENT HEARING**

By Memorandum and Order dated November 17, 2009 and entered  
November 18, 2009 ("November Order"), the Court preliminarily approved the proposed  
Settlement Agreement, dated January 14, 2009 and as amended on October 1, 2009 (the  
"Settlement Agreement"), conditionally certified a settlement class, approved the  
proposed mailed and published class notice (subject to revisions that the Parties have now  
made), and granted the Joint Motion for Preliminary Approval, dated January 16, 2009.  
This Order supplements the November Order. All capitalized terms used in this Order  
that are not otherwise defined herein have the meaning assigned to them in the Settlement  
Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the terms of the Settlement Agreement, subject to further consideration at the Final Settlement Hearing provided for below. The Court concludes that the Settlement is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, free of collusion to the detriment of the Settlement Class (defined below in Paragraph 2 of this Order), and is sufficiently within the range of reasonableness to warrant the conditional certification of the Settlement Class, the scheduling of the Final Settlement Hearing, and the circulation of the revised Mailed and Published Notices to members of the Settlement Class, each as provided for in this Order.

Conditional Certification Of The Settlement Class

2. For purposes of settlement only, and pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), the Court conditionally certifies a class composed of:

(i) all Persons whose health care benefits were insured or administered by any Defendant who, at any time from March 15, 1994 through November 18, 2009, received out-of-network health care benefits that were processed or reimbursed by such Defendant using the Ingenix Databases or any of Defendants' Seven Relevant Out-Of-Network Reimbursement Policies; and (ii) all Out-Of-Network Health Care Providers and Out-Of-Network Health Care Provider Groups who provided Covered Out-Of-Network Services or Supplies to Persons whose health care benefits were insured or administered by any Defendant at any time from March 15, 1994 through November 18, 2009, and whose resulting claims were processed or reimbursed by such Defendant using the Ingenix Databases or any of Defendants' Seven Relevant Out-Of-Network Reimbursement Policies.

("Settlement Class").<sup>1</sup> Solely for the purposes of settlement, the Court provisionally designates the individual Settling Plaintiffs as representatives of the Settlement Class and finds them fair and adequate representatives of the interests of the Settlement Class with claims typical of Settlement Class Members.<sup>2</sup> In addition, and solely for the purposes of settlement, the Court provisionally designates Settlement Class Counsel Pomerantz Haudek Grossman & Gross LLP as Lead Counsel for the Settlement Class and finds that they are experienced and skilled attorneys capable of fairly and adequately representing the interests of the Settlement Class.

The following represents the claims, issues and defenses that the Court preliminarily orders shall be treated on a class basis pursuant to Federal Rule of Civil Procedure 23(c)(2)(B):

- A. Whether Defendants' use of the Ingenix Databases in determining reimbursement for Covered Out-of-Network ("OON") Services or Supplies violated ERISA, the Sherman Antitrust Act, RICO, or state law;
- B. Whether Defendants' use of OON Reimbursement Policies that reduced reimbursement for OON services or supplies violated ERISA or state law;
- C. Whether ERISA requires each Subscriber to prove exhaustion or futility as to each ERISA claim;
- D. Whether ERISA requires each Provider to prove exhaustion or futility as to each ERISA claim;

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<sup>1</sup> Because the proposed certification of the Settlement Class is in connection with the Settlement rather than a trial on the merits, the Court need not resolve the issues of manageability presented by certification of the nationwide classes proposed in the complaints in the Actions.

<sup>2</sup> The Court finds the following individual Settling Plaintiffs adequate representatives of the Settlement Class: Helene Coull, Cynthia Falk, Mary Gilmartin, Michael Grisham, Susie Grisham, Joan Lawrence, Thomas Lawrence, Peter Oborski, Senator Toby Ann Stavisky, Paul Steinberg, Gail Temple, Janet Stravitz, Eliezer Gewirtzman, David Befeler, M.D., Darrick E. Antell, M.D., and David A. Ditsworth, M.D. Solely for the purpose of certifying the Settlement Class, Defendants have agreed not to pursue their affirmative or negative defenses to Settling Plaintiffs' claims in the Actions.

- E. Whether RICO requires each Subscriber to prove exhaustion or futility;
- F. Whether the RICO requires each Provider to prove exhaustion or futility;
- G. Whether ERISA requires each Provider to prove the existence of an assignment;
- H. Whether the Sherman Antitrust Act or RICO requires each Provider to prove the existence of an assignment;
- I. Whether Subscribers or Providers may recover damages if a Subscriber is not balanced billed by a Provider;
- J. Whether the contractual terms of the relevant health plans permit Defendants' reimbursement practices for Covered OON Services or Supplies;
- K. Whether Class Members have standing to assert claims for prospective relief; and
- L. What the applicable statute of limitations periods are for the ERISA, Sherman Antitrust Act, RICO, and state law claims of Class Members.

3. This conditional certification of the Settlement Class, Settling Plaintiffs, and Settlement Class Counsel is solely for purposes of effectuating the Settlement. If (a) the Settlement Agreement is terminated or is not consummated for any reason, (b) this Preliminary Approval Order is modified, reversed, or set aside on further judicial review, or (c) the Court for any reason does not enter the Final Order and Judgment, the foregoing conditional certification of the Settlement Class and appointment of Settling Plaintiffs and Settlement Class Counsel 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, position, or privilege that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Settlement Hearing; Right To Appear And Object

4. A hearing (the "Final Settlement Hearing") shall be held before the Court on July 1, 2010 at 10:00<sup>A.M.</sup> in the United States Courthouse, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, to determine:

- (a) whether the Court should unconditionally certify the Settlement Class and whether Settling Plaintiffs and Settlement Class Counsel have adequately represented the Settlement Class;
- (b) whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable, and adequate;
- (c) whether the causes of action between the Parties pending before this Court should be dismissed on the merits and with prejudice in light of the Settlement;
- (d) whether the application for Attorneys' Fees and expenses to be submitted by Settlement Class Counsel in connection with the Settlement should be approved; and
- (e) such other matters as the Court may deem necessary or appropriate.

The Court may finally approve the Settlement at or after the Final Settlement Hearing (with any modifications agreed to by the Parties) without further notice to the Settlement Class.

5. Any Settlement Class Member may appear at the Final Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at that Hearing, provided, however, that no person shall be heard, and no papers, briefs, or other submissions shall

be considered by the Court in connection with its consideration of those matters, unless on or before May 18, 2010, such person:

(a) files with the Court a notice of such person's intention to appear, together with a statement setting forth such person's objections, if any, to the matters to be considered and the basis therefor, along with any documentation that such person intends to rely upon at the Final Settlement Hearing, and

(b) the same or following day, serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Stanley M. Grossman, Esq.  
D. Brian Hufford, Esq.  
Robert J. Axelrod, Esq.  
POMERANTZ HAUDEK GROSSMAN & GROSS LLP  
100 Park Avenue  
New York, NY 10017

**and**

Jeffrey S. Klein, Esq.  
Nicholas J. Pappas, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153

6. Any Settlement Class Member who does not timely file and deliver a written objection and a notice of intention to appear, no later than May 18, 2010 and any witness not identified in the notice of intention to appear, (a) shall not be permitted to object or appear at the Final Settlement Hearing except for good cause shown, and (b) shall be deemed to have waived and forfeited, and shall be foreclosed from raising, any objection made at the Final Settlement Hearing except for good cause shown.

7. The date and time of the Final Settlement Hearing shall be set forth in the revised Mailed and Published Notices.

8. The Court reserves the right to adjourn the Final Settlement Hearing, or any portion thereof, without further notice of any kind other than an announcement of such adjournment in open court at the Final Settlement Hearing or any adjournment thereof, or by order of the Court entered in the public record of the Actions, and the Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement.

Claims Administrator, Form And Timing Of Notice

9. The Court hereby designates Berdon Claims Administrators LLC as Claims Administrator, and such Claims Administrator shall perform the functions described in the Settlement Agreement.

10. By March 18, 2010, and in accordance with the Settlement Agreement, the Claims Administrator shall cause to be mailed, via first-class postage, copies of the revised Mailed Notice and Claim Form, the form and content of which is attached as Exhibit 1 hereto and is hereby approved, to all members of the Settlement Class for whom a last-known address can be identified through reasonable effort. In addition, by April 22, 2010, and in accordance with the Settlement Agreement, the Claims Administrator shall cause to be published the revised Published Notice, the form and content of which is attached as Exhibit 2 hereto and is hereby approved, in the publications identified in Exhibit 3 hereto.

11. The revised Mailed Notice shall be mailed to all Out-of-Network Health Care Providers and Out-of-Network Health Care Provider Groups as identified in

the records of UnitedHealth Group, Inc. and its affiliates (“United”), who are members of the Settlement Class. The revised Mailed Notice shall also be mailed to all other members of the Settlement Class who received out-of-network health care benefits that were processed or reimbursed by any Defendant using the Ingenix Databases or any of Defendants’ Seven Relevant Out-of-Network Reimbursement Policies, either (a) from January 1, 1996 to December 31, 2009 in connection with United’s legacy claims systems or (b) from January 1, 2002 to December 31, 2009 in connection with United’s non-legacy claims systems. All other members of the Settlement Class shall be notified of the Settlement through publication notice.

12. Prior to the Final Settlement Hearing, the Claims Administrator shall file a sworn statement attesting to compliance with Paragraphs 10-11 of this Order. Costs of providing the notice to the Settlement Class that is specified in this Order shall be paid as set forth in the Settlement Agreement.

13. The revised Notices to be provided as set forth in Paragraphs 10-11 of this Order are hereby found to be the best means of notice to Settlement Class Members that is practicable under the circumstances and are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Actions and their right to object to or exclude themselves from the proposed Settlement. When completed, the revised Notices shall constitute due and sufficient notice of the Settlement, the Settlement Agreement, the Final Settlement Hearing and all other matters set forth in the revised Notices to all persons affected by and/or entitled to participate in the Settlement or the Final Settlement Hearing, in full compliance with the requirements of due process, and the Federal Rules of Civil Procedure.



Ability of Members of The Settlement Class to Opt-Out

14. All members of the Settlement Class who wish to opt-out of the Settlement Class must do so by sending timely, written notice of their election to opt-out to the Claims Administrator at the address set forth in the revised Notices to be provided pursuant to Paragraphs 10-11 of this Order. To be considered timely, and thereby effectively exclude a person from the Settlement Class, the envelope delivering a completed opt-out request for such person must be postmarked by May 22, 2010. Prior to the Final Settlement Hearing, Settlement Class Counsel or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each member of the Settlement Class who has timely elected to opt-out from the Settlement Class. Out-Of-Network Health Care Provider Groups, as distinct legal entities, and their individual Out-Of-Network Health Care Provider members, partners, shareholders, owners, or employees, must separately request exclusion from the Settlement Class in order to opt-out. Requests for exclusion by Out-Of-Network Health Care Provider Groups, as distinct legal entities, must be signed by individuals who attest that they have the authority to bind the Out-Of-Network Health Care Provider Group.

15. Any Settlement Class Member who has not opted out from the Settlement Class pursuant to Paragraph 14 shall be included in such Settlement Class and, if the Settlement is finally approved and becomes effective, shall be bound by all the terms and provisions of the Settlement Agreement, including, but not limited to, the releases, waivers, and covenants not to sue described therein, whether or not such Settlement Class Member shall have objected to the Settlement and whether or not such Settlement Class Member makes a claim upon, or participates in, the Cash Settlement

Fund or the other benefits to the Settlement Class provided by the Settlement Agreement.

Other Provisions

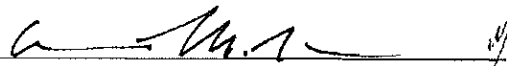
16. All proceedings in this lawsuit, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Settlement Agreement should be approved and the Settlement Class unconditionally certified, all Settlement Class Members are hereby barred and enjoined from commencing, prosecuting, or assigning the right to do so, any action asserting any Released Claims against any Released Person.

17. No discovery by any person with regard to the Settlement or the Settlement Agreement shall be permitted as to any Party other than as may be directed by the Court upon a proper showing by the person seeking such discovery pursuant to a motion properly noticed and served.

18. The Settlement Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it shall not be construed as, offered as, received as, used as, or deemed to be evidence of any kind in this lawsuit or in any other action or proceeding, except in a proceeding to enforce the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence, or an admission or concession of liability, of wrongdoing or breach of any duty on the part of any Party, or as a waiver by any Defendant of any applicable defense, including, without limitation, any applicable statute of limitations.

19. In the event that the Settlement Agreement is terminated or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Settlement Agreement, and without prejudice to the rights, positions, and privileges of the Parties to the Settlement Agreement before it was executed.

SO ORDERED this 4 day of JAN., 2009. 2010

  
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Hon. Lawrence M. McKenna  
United States District Judge