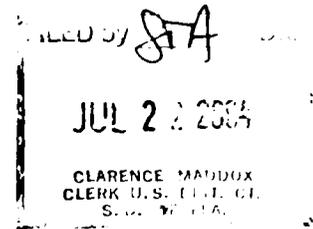


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

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, CERTIFYING CLASS  
AND DIRECTING ENTRY OF FINAL JUDGMENT**

The Court having reviewed and considered the Joint Motion for Final Approval of Proposed Settlement with Actna Inc., a Pennsylvania corporation ("Actna") dated July 14, 200<sup>4</sup>~~4~~ in the action styled ADA v. Actna Inc., Master File No. 00-1334-MD-MORENO (the "Action"), and having been apprised of the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement dated September 2, 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 April 21, 200<sup>4</sup>~~4~~ (the "Preliminary Approval Order"), and the Court having taken into account the objections

*3/20/04*

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 American Dental Association ("ADA") and their counsel, on one hand, and 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 Michael Rosenbaum sworn to on July 12 <sup>4</sup> ~~200~~ and is incorporated by reference into this Order. 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.

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), the Action is permanently certified as a class action on behalf of the following persons (the "Class"):

any and all Dentists and Dentists Groups who provided Covered Services to any Plan Member from August 15, 1995 through the Preliminary Approval Date.

The persons identified on the list submitted to the Court as an exhibit to the Affidavit of Michael Rosenbaum sworn to on July 12<sup>4</sup>, 200~~7~~ 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 in the Action that is proposed in the complaint.

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 Aetna and each of its present and former parents, present and former wholly-owned subsidiaries, present and former divisions and Affiliates (including without limitation Lion Connecticut Holdings, Inc. (formerly known as "Aetna Inc.," a Connecticut corporation) and each of its subsidiaries as of December 14, 2000) and each of their respective officers, directors, employees, and attorneys (and the predecessors, heirs, executors, administrators, legal representatives,

successors and assigns of each of the foregoing), but excluding the Prudential Insurance Company of America, shall be released and forever discharged by the ADA and all Class Members 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 their respective heirs, executors, agents, legal representatives, professional corporations, partnerships, assigns, and successors to the extent such claims are, or are derived from, the claims of members of the Class (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 that relate, arise from, or pertain to billing or payment for dental services ("Claims") arising on or before the Preliminary Approval Date, including all Claims that were or could have been asserted in the Action (the "Released Claims"). Notwithstanding the foregoing, the Releasing Parties shall not be deemed to have released claims for payment for Covered Services that have not been finally adjudicated as of the Implementation Date (the "Retained Claims"), provided that each and every Retained Claim shall be considered a Released Claim 120 days after the Implementation Date unless the Dentist has initiated the appeal process described in the Settlement Agreement, as provided for in section 13(c) 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 April 21, 200~~4~~<sup>4</sup> (the date

of the Preliminary Approval Order) and are, or could have been, alleged in the Complaint, whether any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of others. Nothing in this Order shall be deemed to relieve any person or entity that is not a Released Party from responsibility for its own conduct or conduct of others who are not Released Parties.

7. With respect to the Released Claims and the claims described in paragraph 6 of this Order, the ADA and each member of the Class who has not validly and 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 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 Rights or with respect to 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, 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 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 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 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 Settlement Agreement, the Releasing Parties and Class Counsel are barred from pursuing discovery in the Action.

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 Actna has agreed not to oppose an award of fees and expenses to Class Counsel up to \$1.25 million, to be paid by Actna 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 <sup>defers</sup> awards <sup>my</sup> fees and expenses <sup>F.O.T.</sup> to Class Counsel ~~in the aggregate amount~~ of ~~\$~~ ~~\_\_\_\_\_~~ to be paid by Actna ~~in accordance with the provisions of the Settlement Agreement~~. <sup>F.O.T.</sup>

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 \$ 7,500 to each Representative Plaintiff, to be paid by Aetna in accordance with the provisions of the Settlement Agreement.

Other Provisions

14. 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 ADA, Class Counsel, any members of the Class, 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 ADA, 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 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.

15. 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

16. The Clerk of the Court is directed to enter the Judgment in the form attached to this Order dismissing the Action with prejudice.

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 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

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between or among the parties to that Settlement Agreement, the Court shall award attorneys' fees and costs to the prevailing party.

DONE AND ORDERED in <sup>Open Court</sup>Chambers in Miami-Dade County, Florida this 20<sup>th</sup>  
day of July, 200~~0~~<sup>4</sup>.

  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE