FILED-CLERK
U.S. DISTRICT COURT
00 SEP 26 PM 4:41
TEXAS-EASTERN
BY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NATHAN L. JACKSON, Individually and on behalf of a putative class of Similarly situated individuals	§	
v.	§	
EAST TEXAS MEDICAL CENTER ATHENS, EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM, EAST TEXAS MEDICAL CENTER, EAST TEXAS MEDICAL CENTER PITTSBURGH, EAST TEXAS MEDICAL CENTER FAIRFIELD, EAST TEXAS MEDICAL CENTER RUSK, EAST TEXAS MEDICAL CENTER CROCKETT, EAST TEXAS MEDICAL CENTER JACKSONVILLE, EAST TEXAS MEDICAL CENTER CLARKSVILLE, EAST TEXAS MEDICAL CENTER TRINITY, EAST TEXAS MEDICAL CENTER CARTHAGE, EAST TEXAS MEDICAL CENTER QUITMAN, EAST TEXAS MEDICAL CENTER MOUNT VERNON, AND EAST TEXAS MEDICAL CENTER GRAND SALINE	§	CIVIL ACTION NO. 6:00CV442 WARD JURY DEMANDED
v.	§	DEFENDANTS' FIRST AMENDED ANSWER TO PLAINTIFF'S ORIGINAL PETITION
AETNA HEALTH AND LIFE INSURANCE COMPANY; AETNA INSURANCE COMPANY OF AMERICA; AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS; AMERICAN NATIONAL INSURANCE COMPANY; BANKERS LIFE AND CASUALTY COMPANY; BENEFIT LIFE INSURANCE COMPANY; CHRISTIAN FIDELITY LIFE INSURANCE COMPANY; CIGNA HEALTH-CARE OF TEXAS, INC.; COMBINED UNDERWRITERS LIFE INSURANCE COMPANY; CONNECTICUT GENERAL LIFE INSURANCE COMPANY; EMPLOYERS HEALTH INSURANCE COMPANY; FIRST	§	

72

A35\3421\71\184641

HEALTH LIFE & HEALTH INSURANCE §
COMPANY; FORTIS BENEFITS INSURANCE §
COMPANY; FORTIS INSURANCE COMPANY; §
GENERAL AMERICAN LIFE INSURANCE §
COMPANY; GOLDEN RULE INSURANCE §
COMPANY; THE GUARDIAN LIFE §
INSURANCE COMPANY OF AMERICA; §
HARRIS METHODIST HEALTH INSURANCE §
COMPANY; HARRIS METHODIST TEXAS §
HEALTH PLAN, INC.; HEALTHPLAN OF §
TEXAS, INC. HUMANA HEALTH PLAN OF §
TEXAS, INC.; JEFFERSON PILOT LIFE- §
AMERICA INSURANCE COMPANY; JOHN §
ALDEN LIFE INSURANCE COMPANY; JOHN §
HANCOCK LIFE INSURANCE COMPANY; §
KAISER FOUNDATION HEALTH PLAN OF §
TEXAS; LIBERTY MUTUAL INSURANCE §
COMPANY; MARKEL INSURANCE COMPANY; §
DONNA SHALALA; TEXAS DEPARTMENT §
OF HUMAN SERVICES;METROPOLITAN LIFE §
INSURANCE COMPANY; §
MUTUAL OF OMAHA INSURANCE §
COMPANY; UNITED STATES LETTER §
CARRIERS MUTUAL BENEFIT ASSOCIATION; §
NATIONAL FINANCIAL INSURANCE §
COMPANY; NEW ERA LIFE INSURANCE §
COMPANY; NEW ERA LIFE §
INSURANCE COMPANY OF THE MIDWEST; §
PCA HEALTH PLANS OF TEXAS, INC., D/B/A §
HUMANA HEALTH PLAN OF TEXAS, INC.; §
PHYSICIANS MUTUAL INSURANCE §
COMPANY; PIONEER LIFE §
INSURANCE COMPANY; PRINCIPAL LIFE §
INSURANCE COMPANY; PROVIDENT §
LIFE AND ACCIDENT INSURANCE §
COMPANY; PRUDENTIAL HEALTH CARE §
PLAN, INC.; PRUDENTIAL HEALTHCARE §
AND LIFE INSURANCE COMPANY OF §
AMERICA; THE PRUDENTIAL INSURANCE §
COMPANY OF AMERICA, RELIASTAR §
LIFE INSURANCE COMPANY; RESERVE §
NATIONAL INSURANCE COMPANY; §
SIERRA HEALTH AND LIFE INSURANCE §
COMPANY, INC.; STANDARD LIFE AND §
ACCIDENT INSURANCE COMPANY; §

STATE FARM LIFE INSURANCE	§
COMPANY; UNICARE LIFE & HEALTH	§
INSURANCE COMPANY; UNITED AMERICAN	§
INSURANCE COMPANY; UNITED	§
HEALTHCARE INSURANCE COMPANY;	§
UNIVERSAL FIDELITY LIFE INSURANCE	§
COMPANY; USAA LIFE INSURANCE	§
COMPANY; AND WAUSAU UNDERWRITERS	§
INSURANCE COMPANY	§

DEFENDANTS' FIRST AMENDED ANSWER TO
PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EAST TEXAS MEDICAL CENTER ATHENS ("ETMC-Athens"), EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM ("ETMC-RHS"), EAST TEXAS MEDICAL CENTER ("ETMC"), EAST TEXAS MEDICAL CENTER PITTSBURG ("ETMC-Pittsburg"), EAST TEXAS MEDICAL CENTER FAIRFIELD ("ETMC-Fairfield"), EAST TEXAS MEDICAL CENTER RUSK ("ETMC-Rusk"), EAST TEXAS MEDICAL CENTER CROCKETT ("ETMC-Crockett"), EAST TEXAS MEDICAL CENTER JACKSONVILLE ("ETMC-Jacksonville"), EAST TEXAS MEDICAL CENTER CLARKSVILLE ("ETMC-Clarksville"), EAST TEXAS MEDICAL CENTER TRINITY ("ETMC-Trinity"), EAST TEXAS MEDICAL CENTER CARTHAGE ("ETMC-Carthage"), EAST TEXAS MEDICAL CENTER QUITMAN ("ETMC-Quitman"), EAST TEXAS MEDICAL CENTER MOUNT VERNON ("ETMC-Mount Vernon"), and EAST TEXAS MEDICAL CENTER GRAND SALINE (ETMC-Grand Saline") (collectively referred to as "Defendants") and file this their Plea in Abatement and Original Answer to the Plaintiff's Original Petition subject to their Motion to Compel Arbitration which they still assert and insist upon and for same would respectfully show the Court as follows:

I. Plea in Abatement

Defendants request that this action be abated for the following reasons:

1. Plaintiff has failed to give proper notice of his claim under the Texas Deceptive Trade Practices Act as required by TEX. BUS. & COM. CODE ANN. § 17.505(a).

2. The claims in question in this suit are required to be arbitrated by the contracts and agreements which are applicable to such claims.

II. Rule 12(b) Defenses

3. Plaintiff's Original Petition fails to state a claim upon which relief may be granted.

4. Defendants move for a more definite statement. Plaintiff's Original Petition is too vague, general and indefinite to allow Defendants to prepare a defense to same. In particular, said petition provides affirmative allegations against all of the Defendants collectively instead of alleging the factual circumstances that give rise to alleged causes of action against each Defendant. Such pleadings on the part of the Plaintiff are insufficient to enable Defendants to know what the Plaintiff expects to prove under such allegations.

A. Section V, subsection A of Plaintiff's Original Petition is too vague, general and indefinite. In particular, said paragraph is too vague, general and indefinite in that the Plaintiff alleges that the Defendants have violated the Texas Deceptive Trade Practices Act, but does not set forth which provisions of the Act Plaintiff claims were violated, what alleged conduct was in violation of the Act or to which Defendant(s) such conduct is attributed. Accordingly, Defendants cannot reasonably be required to frame a responsive pleading.

B. Section V, subsection B of Plaintiff's Original Petition is too vague, general and indefinite. In particular, said paragraph is too vague, general and indefinite in that the Plaintiff alleges that the Defendants have committed fraud, but does set forth any

representations or otherwise state what conduct alleged was fraudulent or to which Defendant(s) such conduct is attributed. See FED. R. CIV. P. 9(b). Accordingly, Defendants cannot reasonably be required to frame a responsive pleading.

C. Section V, subsection C of Plaintiff's Original Petition is too vague, general and indefinite. In particular, the Plaintiff alleges that the Defendants have wrongfully converted funds for their own use and benefit, but does not set forth by what conduct such funds were allegedly converted or to which Defendant(s) such conduct is attributed. Accordingly, Defendants cannot reasonably be required to frame a responsive pleading.

D. Section V, subsection D of Plaintiff's Original Petition is too vague, general and indefinite. In particular, the Plaintiff alleges that the Defendants have engaged in a conspiracy, but has not set forth the any specific conduct allegedly constituting a conspiracy or to which Defendant(s) such conduct is attributed. Accordingly, Defendants cannot reasonably be required to frame a responsive pleading.

E. Section VI of Plaintiff's Original Petition is too vague, general and indefinite. In particular, the Plaintiff alleges that all conditions precedent have occurred or have been waived, but does not set forth which conditions precedent have been waived, the conduct allegedly constituting a waiver or to which Defendant(s) such conduct is attributed. Accordingly, Defendants cannot reasonably be required to frame a responsive pleading.

III. Class Action Status

5. This suit is not properly maintainable as a class action under Federal Rule of Civil Procedure 23.

IV. Response to Plaintiff's Allegations

6. Defendants assert that Section I of Plaintiff's Original Petition is not applicable in

Federal Court and thus deny the allegations contained therein.

7. Defendants admit the allegations contained in Section II of Plaintiff's Original Petition.

8. As to the allegations contained in Section III of Plaintiff's Original Petition, Defendants admit that Plaintiff, Nathan L. Jackson, was a patient at ETMC-Athens and that ETMC-Athens is located in Athens, Henderson County, Texas. Defendants admit that services were provided and charges were incurred as a result of treatment provided to Plaintiff at ETMC-Athens. Defendants admit that Plaintiff's health benefit plan made a payment on Plaintiff's account and that said payment was later refunded to Plaintiff's health benefit plan. Defendants deny the remainder of the allegations in Section III of Plaintiff's Original Petition.

9. As to the allegations contained in Section IV of Plaintiff's Original Petition, Defendant admits that Plaintiff seeks to maintain this suit as a class action, but specifically denies that that class certification is proper or that any of the requirements for class certification have been met. Defendants deny any other allegations contained in Section IV of Plaintiff's Original Petition.

10. Defendants deny the allegations contained in Section V, subsection A of Plaintiff's Original Petition.

11. Defendants deny the allegations contained in Section V, subsection B of Plaintiff's Original Petition.

12. Defendants deny the allegations contained in Section V, subsection C of Plaintiff's Original Petition.

13. Defendants deny the allegations contained in Section V, subsection D of Plaintiff's Original Petition.

14. Defendants deny the allegations contained in Section VI of Plaintiff's Original Petition.

15. Defendants deny the allegations contained in Section VII of Plaintiff's Original Petition and specifically deny that Plaintiff is entitled to recover attorney's fees.

16. Defendants deny the allegations contained in Section VIII of Plaintiff's Original Petition and specifically deny that Plaintiff is entitled to any of the relief requested therein.

V. Affirmative Allegations

17. Plaintiff does not have standing to assert the claims made in his Original Petition.

18. Plaintiff's claims are barred by the doctrines of ratification, waiver and estoppel.

19. Defendant ETMC-Athens would show that Plaintiff's claims are barred by defense of payment. In this regard, ETMC-Athens has properly refunded all amounts allegedly due to Plaintiff by refunding to Plaintiff's health benefit plan the payment it made on Plaintiff's behalf.

20. The damages claimed by the Plaintiff, if any, are the result of actions and conduct of third-parties over whom Defendants had no control and no right of control.

VI. Frivolous Action

21. Defendants allege that Plaintiff's suit is groundless in that it has no basis in law or in fact and has been brought in bad faith or for the purpose of harassment. In this regard, Defendants would show that Plaintiff was not a patient or customer of any Defendant other than ETMC-Athens and that no Defendant other than ETMC-Athens has ever billed Plaintiff or his insurance carrier for charges attributable to services provided to him or collected any sums from Plaintiff or his insurance carrier for such charges.

VII. Prayer

22. WHEREFORE, PREMISES CONSIDERED, Defendants pray for the following relief:

A. That this case be abated until the 60th day after Plaintiff gives proper notice of his claim in accordance with Tex. Bus. & Com. Code Ann. § 17.505(a) and all claims have been submitted to arbitration;

B. That the Court enter an order compelling the parties to submit to binding arbitration;

C. That Plaintiff's claims be dismissed;

D. That Plaintiff be ordered to amend his Original Petition to state with specificity the claims being made and the factual bases for such claims and to specify which claims apply to which Defendant(s);

E. That class certification be denied;

F. That Plaintiff take nothing and that Defendants be discharged with all costs incurred;

G. That Plaintiff and his attorneys be ordered to pay all attorneys' fees and expenses incurred by Defendants as a result of being forced to defend this action; and

H. That Defendants receive such other and further relief to which they may be entitled.

Respectfully submitted,

POTTER MINTON
A Professional Corporation
P. O. Box 359
Tyler, Texas 75710
Telephone: (903) 597-8311
Facsimile: (903) 593-0846

By: _____
MICHAEL E. JONES
State Bar No. 10929400
Attorney in Charge

JAY N. GREEN
State Bar No. 08356300

E. GLENN THAMES, JR.
State Bar No. 00785097

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon all counsel of record by certified United States Mail, return receipt requested, on this the 26th day of September, 2000.

_____