IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
OCT 16 2000
DAVID J. MALAND, CLERK
BY
DEPUTY

NATHAN L. JACKSON, Individually and on behalf of a putative class of similarly situated individuals,	§	
Plaintiff,	§	
v.	§	
EAST TEXAS MEDICAL CENTER, ATHENS, ET AL,	§	CIVIL ACTION NO. 6:00CV442-WMS
Defendants and Third-Party Plaintiffs,	§	
v.	§	
AETNA HEALTH AND LIFE INSURANCE COMPANY, ET AL,	§	
Third-Party Defendants.	§	

ANSWER OF MARKEL INSURANCE COMPANY TO
DEFENDANTS' FIRST AMENDED THIRD-PARTY COMPLAINT

Markel Insurance Company ("Markel"), one of the third-party defendants herein, files its answer to Defendants' First Amended Third-Party Complaint ("Third-Party Complaint"), and states:

1. With respect to the allegations contained in Paragraph 1 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Third-Party Plaintiffs.

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2. With respect to the allegations contained in Paragraph 2 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding "the following insurance companies, health plans and governmental entities, . . ."

3. With respect to the allegations contained in Paragraph 3 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Aetna Health and Life Insurance Company.

4. With respect to the allegations contained in Paragraph 4 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Aetna Insurance Company of America.

5. With respect to the allegations contained in Paragraph 5 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding American Family Life Assurance Company of Columbus.

6. With respect to the allegations contained in Paragraph 6 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding American National Insurance Company.

7. With respect to the allegations contained in Paragraph 7 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Bankers Life and Casualty Company.

8. With respect to the allegations contained in Paragraph 8 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Benefit Life Insurance Company.

9. With respect to the allegations contained in Paragraph 9 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Christian Fidelity Life Insurance Company.

10. With respect to the allegations contained in Paragraph 10 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Cigna Healthcare of Texas, Inc.

11. With respect to the allegations contained in Paragraph 11 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Combined Underwriters Life Insurance Company.

12. With respect to the allegations contained in Paragraph 12 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Connecticut General Life Insurance Company.

13. With respect to the allegations contained in Paragraph 13 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Employers Health Insurance Company.

14. With respect to the allegations contained in Paragraph 14 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding First Health Life & Health Insurance Company.

15. With respect to the allegations contained in Paragraph 15 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Fortis Benefits Insurance Company.

16. With respect to the allegations contained in Paragraph 16 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Fortis Insurance Company.

17. With respect to the allegations contained in Paragraph 17 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding General American Life Insurance Company.

18. With respect to the allegations contained in Paragraph 18 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Golden Rule Insurance Company.

19. With respect to the allegations contained in Paragraph 19 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding The Guardian Life Insurance Company of America.

20. With respect to the allegations contained in Paragraph 20 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Harris Methodist Health Insurance Company.

21. With respect to the allegations contained in Paragraph 21 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Harris Methodist Texas Health Plan, Inc.

22. With respect to the allegations contained in Paragraph 22 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding HealthPlan of Texas, Inc.

23. With respect to the allegations contained in Paragraph 23 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Humana Health Plan of Texas, Inc.

24. With respect to the allegations contained in Paragraph 24 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Jefferson Pilot Lifeamerica Insurance Company.

25. With respect to the allegations contained in Paragraph 25 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding John Alden Life Insurance Company.

26. With respect to the allegations contained in Paragraph 26 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding John Hancock Life Insurance Company.

27. With respect to the allegations contained in Paragraph 27 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Kaiser Foundation Health Plan of Texas.

28. With respect to the allegations contained in Paragraph 28 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Liberty Mutual Insurance Company.

29. Admits the allegations contained in Paragraph 29 of the Third-Party Complaint.

30. With respect to the allegations contained in Paragraph 30 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Donna E. Shalala, in her official capacity as Secretary, United States Department of Health and Human Services, and as administrator of the Medicare Program.

31. With respect to the allegations contained in Paragraph 31 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Texas Department of Human Services.

32. With respect to the allegations contained in Paragraph 32 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Metropolitan Life Insurance Company.

33. With respect to the allegations contained in Paragraph 33 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Mutual of Omaha Insurance Company.

34. With respect to the allegations contained in Paragraph 34 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding National Financial Insurance Company.

35. With respect to the allegations contained in Paragraph 35 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding New Era Life Insurance Company.

36. With respect to the allegations contained in Paragraph 36 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding New Era Life Insurance Company of the Midwest.

37. With respect to the allegations contained in Paragraph 37 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding PCA Health Plans of Texas, Inc. d/b/a Humana Health Plan of Texas, Inc.

38. With respect to the allegations contained in Paragraph 38 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Physicians Mutual Insurance Company.

39. With respect to the allegations contained in Paragraph 39 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Pioneer Life Insurance Company.

40. With respect to the allegations contained in Paragraph 40 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Principal Life Insurance Company.

41. With respect to the allegations contained in Paragraph 41 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Provident Life and Accident Insurance Company.

42. With respect to the allegations contained in Paragraph 42 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Prudential Health Care Plan, Inc.

43. With respect to the allegations contained in Paragraph 43 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Prudential Healthcare and Life Insurance Company of America.

44. With respect to the allegations contained in Paragraph 44 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding The Prudential Insurance Company of America.

45. With respect to the allegations contained in Paragraph 45 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Reliastar Life Insurance Company.

46. With respect to the allegations contained in Paragraph 46 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Reserve National Insurance Company.

47. With respect to the allegations contained in Paragraph 47 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Sierra Health and Life Insurance Company, Inc.

48. With respect to the allegations contained in Paragraph 48 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Standard Life and Accident Insurance Company.

49. With respect to the allegations contained in Paragraph 49 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding State Farm Life Insurance Company.

50. With respect to the allegations contained in Paragraph 50 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Unicare Life & Health Insurance Company.

51. With respect to the allegations contained in Paragraph 51 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding United American Insurance Company.

52. With respect to the allegations contained in Paragraph 52 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding United Healthcare Insurance Company.

53. With respect to the allegations contained in Paragraph 53 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Universal Fidelity Life Insurance Company.

54. With respect to the allegations contained in Paragraph 54 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding USAA Life Insurance Company.

55. With respect to the allegations contained in Paragraph 55 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding Wausau Underwriters Insurance Company.

56. With respect to the allegations contained in Paragraph 56 of the Third-Party Complaint, states that it is without knowledge or information sufficient to form a belief as to the information regarding National Association of Letter Carriers Health Benefit Plan.

57. With respect to the allegations contained in Paragraph 57 of the Third-Party Complaint, states that such allegation is merely definitional, to which no answer is required.

58. With respect to the allegations contained in Paragraph 58 (including subparts A through D) of the Third-Party Complaint, admits that Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiff; states that Plaintiff's Original Petition speaks for itself; and denies the remaining allegations.

59. With respect to the allegations contained in Paragraph 59 of the Third-Party Complaint, admits, based on information and belief, the allegations pertaining to ERISA; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, therefore, denies them.

60. With respect to the allegations contained in Paragraph 60 of the Third-Party Complaint, admits that Third-Party Plaintiffs have "expressly denied that they are liable for any damages whatsoever and assert that they acted properly in refunding the amount of any overpayments directly to the health insurance carrier that made the payment"; denies that Third-Party Plaintiffs are entitled to contribution and/or indemnity; denies Markel is liable to Third-Party Plaintiffs for any alleged overpayment; denies Third-Party Plaintiffs are entitled to any recovery from Markel; and denies the remaining allegations.

61. With respect to the allegations contained in Paragraph 61 of the Third-Party Complaint, denies Third-Party Plaintiffs are entitled to declaratory judgment relief; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

62. With respect to the allegations contained in Paragraph 62 of the Third-Party Complaint, denies the allegations against Markel; denies that Third-Party Plaintiffs are entitled to any recovery from Markel; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

63. Denies all allegations not specifically admitted.

AFFIRMATIVE DEFENSES

64. Third-Party Plaintiffs' state law claims are preempted by ERISA.

65. Markel further states that it is not a proper party to this lawsuit. In particular, as Markel understands Plaintiff's Original Petition and Third-Party Plaintiffs' First Amended Third-Party Complaint, it has not received any of the "refunds" which are the subject of this lawsuit.

RELIEF REQUESTED

66. Markel requests the following relief:

(a) That Third-Party Plaintiffs take nothing by reason of their suit;

(b) That Markel be dismissed with its costs and attorneys' fees under 29 U.S.C. § 1132(g); and

(c) That Markel have such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

By: _____
Andrew G. Jubinsky
State Bar No. 11043000
Attorney-in-Charge

OF COUNSEL:
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ATTORNEYS FOR THIRD-PARTY DEFENDANT MARKEL INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded via certified mail, return receipt requested to Mr. D. Brent Lemon, Shaw & Lemon, 2723 Fairmount, Dallas, Texas 75201, Mr. Charles A. Clark, Clark Lea Rutter & Logson, 604 Woldert, Tyler, Texas 75702, and Mr. Michael E. Jones, Mr. Jay Green, and Mr. E. Glenn Thames, Jr., Potter Minton Roberts Davis & Jones, P. O. Box 359, Tyler, Texas 75710, and via U. S. First Class Mail to all other counsel of record on the attached Service List, on the 13th day of October, 2000.

Bill E. Davidoff

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