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6-14-2012

# Order on Motion to Compel (Coliseum Medical Center LLC)

Alice D. Bonner  
*Superior Court Judge*

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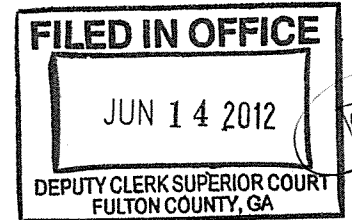
**COPY**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

COLISEUM MEDICAL CENTER, LLC, d/b/a )  
COLISEUM MEDICAL CENTERS; )  
EASTSIDE MEDICAL CENTER, LLC, d/b/a )  
EMORY EASTSIDE MEDICAL CENTER; )  
CARTERSVILLE MEDICAL CENTER, LLC, )  
d/b/a CARTERSVILLE MEDICAL CENTER; )  
REDMOND PARK HOSPITAL, LLC, d/b/a )  
REDMOND REGIONAL MEDICAL CENTER; )  
PALMYRA PARK HOSPITAL, LLC, d/b/a )  
PALMYRA MEDICAL CENTERS; FAIRVIEW )  
PARK, LIMITED PARTNERSHIP d/b/a )  
FAIRVIEW PARK HOSPITAL, and )  
DOCTORS HOSPITAL OF AUGUSTA, LLC, )  
d/b/a DOCTORS HOSPITAL (AUGUSTA) )  
Plaintiffs, )

v. )

AETNA WORKERS' COMP ACCESS, LLC; )  
MEDICOR MANAGED CARE, LLC; )  
TRAVELERS INDEMNITY COMPANY; )  
LIBERTY MUTUAL INSURANCE COMPANY; )  
BUILDERS INSURANCE (A MUTUAL )  
CAPTIVE COMPANY); SEDGWICK CLAIMS )  
MANAGEMENT SERVICES, INC.; )  
HARTFORD INSURANCE COMPANY OF )  
THE SOUTHEAST, and SENTRY )  
INSURANCE, A MUTUAL COMPANY. )  
Defendants. )



*Bus 1*

Civil Action File No.

2011CV198928

**ORDER ON MOTION TO COMPEL**

On May 7, 2012, counsel appeared before the Court to present oral argument on Defendant Aetna Workers' Comp Access, LLC's ("Aetna") Motion to Compel Production of Documents and for Sanctions. Upon consideration of the arguments of counsel, the briefs submitted on the motions and the record of the case, this Court finds as follows.

Plaintiffs are Georgia hospitals that claim they were underpaid on bills for prosthetics, implants and high cost drugs they provided to patients entitled to benefits under the Georgia Workers' Compensation Act (the "Act"). In 2006, Plaintiffs entered into a Letter of Agreement ("LOA") with Aetna that set forth, among other things, a specific payment schedule for services the Plaintiffs provided to members of Aetna workers' compensation access network ("Network"). The Network was designed to connect various payors, or claims administrators who administer workers' compensation coverage, with service providers, like Plaintiffs, who agree to offer medical services, sometimes for a discount, for Network members. In exchange, Aetna agreed to designate Plaintiffs as preferred providers for patients eligible for workers' compensation benefits. In addition to negotiating rates with hospitals and establishing a network of payors, Aetna served as the administrator of the Network and processed claims pursuant to the rate schedule set forth in the LOA. Aetna is not responsible for payment under the LOA.

Under the LOA, Plaintiffs agreed to provide certain "general" services at a 2% discount from the rate established under the Act. However, Plaintiffs were entitled to 80% of their billed charges for certain special services, such as prosthetics, implants and high cost drugs greater than \$500.

Plaintiffs contend that Aetna failed to process claims for "special" services at the rates established under the LOA and, in turn, that Defendant Payors failed to pay claims under the LOA's contracted rate for the identified "special" services. Plaintiffs have asserted a claim against Aetna for Breach of the LOA and a claim against Defendant

Payors, based on the theory that Plaintiffs are third party beneficiaries of any contracts between Aetna and Defendant Payors that obligated Defendant Payors to pay for hospital services under the rates set forth in the LOA.

Aetna<sup>1</sup> has filed a motion to compel seeking documents responsive to the following request:

23. For each and every Medical Claim, produce the following documents:

(a) the vendor invoice evidencing the cost of each implant for which you seek additional reimbursement.

Plaintiffs object to producing implant vendor invoices contending that they are irrelevant, because under the LOA, Plaintiffs argue that they should have been reimbursed for implants at 80% of the amount they billed.

Under Georgia's liberal discovery scheme, "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party..." O.C.G.A. § 9-11-26(b)(1).

Aetna contends that implant vendor invoices are probative of several defenses based on their theory that Plaintiffs overly inflated the billed amounts compared to the actual implant billed charge. For example, Aetna asserts that this conduct amounts to a breach of the implied covenant of good faith and fair dealing. Additionally, Aetna disputes Plaintiffs' alleged status as a third-party beneficiary on which their claims

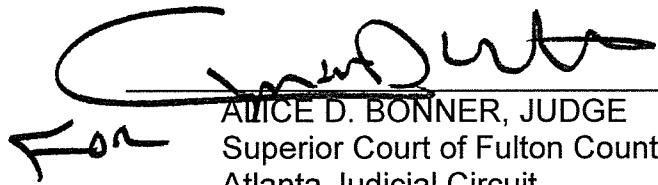
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<sup>1</sup> Defendant Travelers Indemnity Company has also filed a motion to compel seeking the same information at issue in the instant motion. Although it was not ripe for consideration at the hearing on May 7, 2012, this Order will be dispositive of that motion, as well. Additionally, Defendants Builders Insurance, Sedgwick Claims Management Services, Inc. and Liberty Mutual Insurance Company have joined in Aetna's motion.

against Defendant Payors depends. If Aetna prevailed on such a defense, the dispute would be governed by the Act, which relies on the actual vendor invoices to calculate the reasonable amount of implant charges.

The Court agrees. Aetna's motion is **GRANTED**. Plaintiffs are ordered to fully respond to Aetna's discovery requests regarding the production of vendor invoices within 30 days. Because Plaintiffs' objection was premised on a good faith dispute and the parties have otherwise cooperated in the discovery process, the Court declines to award attorneys fees under O.C.G.A. § 9-11-37.

SO ORDERED this 14 day of June, 2012.

  
 ALICE D. BONNER, JUDGE  
 Superior Court of Fulton County  
 Atlanta Judicial Circuit

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