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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

No. 98-06581-W1R

HEALTH LINK,

Debtor(s).

SACRED HEART MEDICAL CENTER,

Plaintiff,

vs.

AETNA U.S. HEALTHCARE OF
WASHINGTON, INC.,

Adv. No. A01-00109-W1R

Defendant(s).

ST. JOSEPH CARE CENTER,

Plaintiff,

vs.

HEALTH NET, INC.,

Adv. No. A01-00117-W1R

Defendant(s).

SACRED HEART MEDICAL CENTER,

Plaintiff,

vs.

HEALTH NET, INC., et al.,

Adv. No. A01-00118-W1R

Defendant(s).

FILED

NOV 21 2001

ENTERED

11/21/01

T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT

1	SACRED HEART MEDICAL CENTER,)	
2)	
	Plaintiff,)	
3	vs.)	
4	PACIFICARE OF WASHINGTON, INC.,)	Adv. No. A01-00121-W1R
5)	
	Defendant.)	
6	<hr/>		
7	ST. JOSEPH CARE CENTER,)	
8)	
	Plaintiff,)	Adv. No. A01-00122-W1R
9	vs.)	
10	PACIFICARE OF WASHINGTON, INC.,)	MEMORANDUM DECISION RE:
11)	PLAINTIFFS' MOTIONS FOR
	Defendant.)	ABSTENTION AND REMAND
12	<hr/>		

13 THIS MATTER came on for hearing before the Honorable Patricia C.
14 Williams on October 15, 2001 upon Plaintiffs' Motions for Abstention and
15 Remand. Plaintiffs were represented by Gerald Kobluk; Defendant Aetna
16 U.S. Healthcare of Washington was represented by John Campbell;
17 Defendant Health Net, Inc. and Molina Healthcare of Washington, Inc.
18 were represented by Stevan Phillips; and defendant Pacificare of
19 Washington, Inc. was represented by Edward Johnson. The Court reviewed
20 the files and records herein, heard argument of counsel and was fully
21 advised in the premises. The court now enters its Memorandum Decision.

22 **FACTS**

23 Requests for remand to the state court have been made by the
24 plaintiffs in these five adversary proceedings which relate to the three
25 jointly administered bankruptcy proceedings of the related entities
26 collectively referred to as Health Link. The debtor's primary business

1 was to contract with health insurance companies and health maintenance
2 organizations (HMO). By the terms of those contracts, and there are
3 disputes as to whether certain contracts even existed, the health care
4 providers would submit billings for medical services to the insured or
5 member of the HMO to Health Link. The debtor would process the billing
6 and pay the medical service provider on behalf of the health insurance
7 company or HMO. The contracts had varying provisions regarding the
8 reimbursement of the debtor by the health insurance company or HMO.
9 These plaintiffs are health care providers who did not receive payment
10 from Health Link for services provided to insureds or members of HMOs.
11 The plaintiffs brought suit against the insurance company or HMO in
12 state court seeking payment. A more detailed analysis of the factual
13 background and business milieu which gave rise to these five adversaries
14 appears in this court's prior decision entered July 11, 2001 in *Empire*
15 *Health Services v. Aetna U.S. Healthcare of Washington, Inc.*, A01-00027
16 and *Empire Health Services v. State of Washington*, A01-00028
17 (hereinafter referred to as the "Prior Decision").

18 Although this situation involves five adversary proceedings, there
19 are only two plaintiffs. The plaintiff in adversary No. 01-00118-W1R is
20 Sacred Heart Medical Center, a medical care provider. In state court,
21 it sued Health Net, Inc., a successor-in-interest of QualMed Washington
22 Health Plan, Inc., a health insurance company, to whose insureds the
23 plaintiff provided medical services. Health Link failed to pay the
24 plaintiff for those medical services and the plaintiff now seeks to
25 directly recover from the health insurance company. Sacred Heart
26 Medical Center is also the plaintiff in adversary No. 01-00121-W1R. It

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28 MEMORANDUM DECISION RE: . . . - 3

1 brought suit against Pacificare of Washington, Inc. on the same basis.
2 Sacred Heart Medial Center is also the plaintiff in adversary No. 01-
3 000109-W1R and, again on the same basis, brought suit against Aetna U.S.
4 Healthcare of Washington, Inc., a successor-of-interest to NYL Care
5 Health Plans Northwest, Inc.

6 The plaintiff in adversary No. 01-00117-W1R is St. Joseph Care
7 Center, a medical care provider. It also brought suit against Health
8 Net, Inc., as successor-in-interest of QualMed Washington Health Plan,
9 Inc., to whose insureds the plaintiff provided medical services. Health
10 Link failed to pay the plaintiff for those medical services and the
11 plaintiff now seeks to directly recover from the health insurance
12 company. In adversary No. 01-00122-W1R, St. Joseph Care Center brought
13 suit against Pacificare of Washington, Inc. on the same basis.

14 Although the contracts between the various defendants (or their
15 predecessors) and Health Link varied and the course of dealing between
16 the plaintiffs and Health Link varied, the essential dispute is that
17 each plaintiff provided medical services, each defendant paid sums to
18 Health Link to pay for those services and as Health Link failed to pay
19 the plaintiffs for the services, each defendant should do so. These
20 five adversary proceedings were originally commenced in state court on
21 April 30, 2001 and were removed to this court between May 23, 2001 and
22 June 4, 2001.

23 **Was Removal Proper Under 28 U.S.C. § 1334(b) and 1452(a)?**

24 If the outcome of these adversaries could conceivably affect the
25 bankruptcy estate, "related to" jurisdiction exists under 28 U.S.C.
26 § 1334(b). "Related to" jurisdiction is very broad and even includes
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1 matters only indirectly related to the bankruptcy proceedings or the
2 bankruptcy estate. *In re ACI-HDT Supply Co.*, 205 B.R. 231, 237 (B.A.P.
3 9th Cir. 1997). The question of whether "related to" jurisdiction exists
4 is to be determined at the time of the removal. *Sparta Surgical Corp. v.*
5 *National Ass'n of Securities Dealers, Inc.*, 159 F.3d 1209 (9th Cir. 1998)
6 and *In re Carraher*, 971 F.2d 327 (9th Cir. 1992). For the reasons set
7 forth in the Prior Decision, "related to" jurisdiction existed at the
8 time of the removal which occurred between May 23, 2001 and June 4,
9 2001. The removal of the five state court cases was proper and the
10 question then becomes whether this court should exercise its discretion
11 and remand the cases back to the state court.

12 **Should the Cases Be Remanded Under 28 U.S.C. § 1452(b)?**

13 Application of the factors to determine whether equitable remand is
14 appropriate is to be made at the time the decision to remand is
15 considered, not at the time the case is removed. Even though the
16 underlying bankruptcy proceeding is dismissed and there is then no
17 bankruptcy estate to which the suit may "relate", the Bankruptcy Court
18 may continue to have jurisdiction. Dismissal of the underlying
19 bankruptcy proceeding is one example of the many types of events or
20 changes in circumstances which may occur between removal and the
21 decision to remand. *In re Smith*, 866 F.2d 576, 580 (3d Cir. Pa. 1989).

22 The court must apply the same equitable remand factors as applied
23 in the Prior Decision to determine whether it is in the best interest of
24 justice to retain or remand these five adversary proceedings. The
25 factual and legal issues presented by these adversaries only slightly
26 differ from those previously presented. There are, however, some
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1 circumstances which have changed since the Prior Decision.¹ The key
2 distinction between the current application of factors and that which
3 occurred in the Prior Decision is that now neither the plaintiffs nor
4 the defendants in these five adversaries may bring claims against the
5 estate due to the existence of settlement agreements.

6 Between the entry of the Prior Decision and consideration of this
7 request to remand, significant events have occurred in the underlying
8 bankruptcy proceeding and the numerous related adversaries. As was the
9 situation at the time of the Prior Decision, a settlement was reached in
10 Case No. CS-99-140-FVS pending in federal district court. The
11 settlement is among the Health Link Chapter 7 Trustee and various
12 parties including these defendants, Pacificare of Washington, Inc. and
13 Aetna U.S. Healthcare of Washington, Inc. (through its predecessor-in-
14 interest NYL Care). That settlement has now been implemented. The
15 defendants in these adversary proceedings have released all claims
16 against the bankruptcy estate and significant sums were paid to the
17 bankruptcy estate as a result of the settlement. At this time, the
18 defendants in these five adversary proceedings, even if the plaintiffs
19 prevail against them in these adversary proceedings, have no recourse
20 against the bankruptcy estate.

21 More importantly, since the Prior Decision, a settlement has been
22 reached among the bankruptcy Chapter 7 Trustee and various medical care
23 providers. These plaintiffs, St. Joseph Care Center and Sacred Heart
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25 ¹At least one plaintiff in these adversaries has indicated that a
26 jury demand will be made. Since the complaints contain both legal and
27 equitable causes of action, it is premature to determine whether a
jury would be required.

1 Medical Center, are parties to the settlement and have released all
2 claims against the estate. That settlement was approved on
3 September 20, 2001. At the time of the Prior Decision, the adversary
4 proceeding No. A00-00244-W1R filed by the Trustee seeking to recover
5 preference payments from Sacred Heart Medical Center, a plaintiff in
6 three of these adversaries, had been filed. That adversary remains open
7 pending resolution of claims against the remaining defendants. That
8 adversary No. A00-00244-W1R was one of approximately 350 adversary
9 proceedings in which the Chapter 7 Trustee sought recovery of
10 preferences. Since the Prior Decision, a settlement plan has been
11 mediated pursuant to which many of the adversaries have been settled and
12 dismissed. Implementation of that plan continues. It is unknown
13 whether settlement of adversary No. 00-00244-W1R will result from the
14 mediated settlement plan, but the likelihood of a settlement of that
15 voidable preference adversary and indeed, in any of the adversaries, has
16 been greatly increased.

17 At this time, the likelihood of any conceivable impact on the
18 bankruptcy estate from a final resolution of these adversaries appears
19 de minimis. Regardless of the outcome of these plaintiffs' claims
20 against these defendants, neither these plaintiffs or these defendants
21 may bring a claim against the estate under the settlement agreements and
22 releases. The complicated picture of the disputes and issues involving
23 the Health Link estate has simplified since the Prior Decision and these
24 particular entities have removed many of their overlapping claims and
25 counterclaims from the picture. Records and information held by the
26 estate will certainly be relevant to the resolution of the disputes, but
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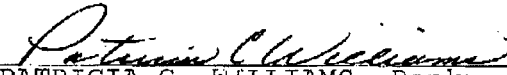
1 nothing in the Code protects bankruptcy estates or debtors from their
2 obligations to appear as witnesses in proceedings between other parties
3 which have no claims against the debtor or estate.

4 **CONCLUSION**

5 Therefore, this court determines that application of the equitable
6 factors of remand under the current circumstances requires these five
7 cases to be remanded to the state court for determination of the issues
8 between the plaintiffs and the defendants. Orders will be entered to
9 this effect.

10 The Clerk of Court is directed to file this Memorandum Decision and
11 provide copies to counsel.

12 DATED this 21st day of November, 2001.

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15 PATRICIA C. WILLIAMS, Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

CERTIFICATE OF SERVICE

The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Washington hereby certifies that a copy of the document, of which this is attached, was mailed this date to the following parties as required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

<u>Ca Kobler</u>	_____
<u>J Campbell</u>	_____
<u>S Phillips</u>	_____
<u>E Johnson</u>	_____
_____	_____

<u>Abe Wolfand</u>	NOV 21 2001
Deputy Clerk	Date