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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)
HEALTH LINK,)
Debtor(s).)

No. 98-06581-W1R

EMPIRE HEALTH SERVICES, a)
Washington non-profit corporation,)
doing business as DEACONESS)
MEDICAL CENTER and VALLEY HOSPITAL)
AND MEDICAL CENTER,)

Adv. No. A01-00027-W1R

Plaintiff(s),)

vs.)

AETNA U.S. HEALTHCARE OF)
WASHINGTON, INC., a Washington)
corporation; successor-in-interest)
to NYL Care Health Plans Northwest,)
Inc., a health care service)
contractor,)

Defendant(s).)

EMPIRE HEALTH SERVICES, a)
Washington non-profit corporation,)
doing business as DEACONESS MEDICAL)
CENTER and VALLEY HOSPITAL AND)
MEDICAL CENTER,)

Plaintiff(s),)

vs.)

STATE OF WASHINGTON, acting through)
its Department of Social and)
Health Services and Health Care)
Authority; and AETNA U.S.)
HEALTHCARE OF WASHINGTON, INC., a)
Washington corporation; successor-)
in-interest to NYL Care Health)
Plans Northwest, Inc., a health)
care service contractor,)

Defendant(s).)

FILED

JUL 11 2001

T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Adv. No. A01-00028-W1R

MEMORANDUM DECISION RE:
PLAINTIFF'S MOTIONS FOR REMAND

ENTERED

07/11/01 Lew

1 Washington, through its Healthy Options and Medicaid programs provided
2 health care coverage to certain residents of the state. It paid
3 "premiums" [some were Medicaid funds] to Aetna on behalf of those
4 residents and Aetna in turn was to pay the cost of the health care
5 services provided the residents. Again Aetna paid some portion of the
6 premiums to Health Link which agreed to pay the cost of the health care
7 services provided to the residents. Those residents obtained health
8 care services from the plaintiff. Health Link did not pay the cost of
9 those services and the plaintiff seeks to recover the cost of the
10 services from either the state or Aetna.

11 On January 29, 2001, defendant Aetna filed in both suits in state
12 court, Notices of Removal under 28 U.S.C. § 1452 of the suits to this
13 court. The State of Washington has not filed its own notice of removal
14 but has appeared and argued both in briefs and orally in support of the
15 removal and in opposition to the plaintiff's Motion for Remand. It
16 appears based upon this court's files that the state has waived its
17 sovereign immunity and consents to this court's exercise of jurisdiction
18 in these matters and this decision is based upon that conclusion.
19 **However, the state must within 20 days of the entry of this decision**
20 **file a pleading unequivocally waiving sovereign immunity and consenting**
21 **to jurisdiction or stating that it does not do so.**

22 These matters arose pursuant to the plaintiff's Motions for Remand
23 and request for abstention under 28 U.S.C. § 1334. Although there are
24 two state court suits, as the suits are conceptually similar in nature,
25 this discussion will address the two suits as one.

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1 **LEGAL ANALYSIS**

2 Although both discretionary abstention under 28 U.S.C. § 1334(c)(1)
3 and mandatory abstention under 28 U.S.C. § 1334(c)(2) have been argued,
4 when a state court suit has been commenced but removed pursuant to
5 28 U.S.C. § 1452(a) to a federal court, no state court suit is then
6 pending. The question of whether these suits are to remain in federal
7 court is a question not of abstention but of remand under 28 U.S.C.
8 § 1452(b). *Security Farms v. International Bhd. of Teamsters*, 124 F.3d
9 999 (9th Cir. 1997).

10 In this particular situation, the plaintiff Empire Health has
11 argued in its Motions for Remand that not only does equity require
12 remand to the state court, but that the removal was improper.

13 **WAS REMOVAL PROPER UNDER 28 U.S.C. § 1452(a)?**

14 28 U.S.C. § 1452(a) allows a party to remove a suit to federal
15 court “. . . if such district court has jurisdiction of such claim or
16 cause of action under section 1334 of this title.” The plaintiff Empire
17 Health argues that the Bankruptcy Court does not have jurisdiction under
18 28 U.S.C. § 1334 and thus the removal was improper and this court has no
19 option but to remand the suits to the state court.

20 28 U.S.C. § 1334 provides bankruptcy courts with three types of
21 jurisdiction. The first is exclusive jurisdiction of “all cases arising
22 under title 11” which refers to the underlying bankruptcy proceeding
23 itself. The second is non-exclusive jurisdiction of all cases “arising
24 in” a case under Title 11. This refers to administration and
25 adjudication of matters which would not exist absent a bankruptcy
26 proceeding. *Bethlahmy v. Kuhlman (In re ACI-HDT Supply Co.)*, 205 B.R.

1 231 (B.A.P. 9th Cir. 1997). The third is non-exclusive jurisdiction of
2 cases which are "related to" cases under Title 11, i.e., those which
3 could conceivably have an impact on the administration of the bankruptcy
4 estate. If the outcome of the litigation could alter the debtor's
5 rights or liabilities or determine legal rights of the estate, the
6 bankruptcy court has "related to" jurisdiction over the litigation.
7 *Pacor Inc. v. Higgins*, 743 F.2d 984 (3rd Cir. Pa. 1984); *In re American*
8 *Hardwoods*, 885 F.2d 621 (9th Cir. 1989).

9 This situation certainly does not constitute the first type of
10 jurisdiction, cases "arising under". If it constitutes either of the
11 remaining types of jurisdiction, the removal was proper. A lengthy
12 examination of the circumstances of the underlying bankruptcy proceeding
13 and the factual and legal disputes arising in several related matters is
14 necessary to analyze the issue.

15 In 1998 three related entities, commonly and collectively referred
16 to as Health Link, commenced Chapter 11 proceedings in this court. The
17 records and affairs of each of the entities were commingled and in
18 disarray. Health Link in its various corporate forms had contracted
19 with health care providers and served as their agent for the purpose of
20 negotiating and contracting with insurance companies and HMOs and
21 others. This was a small portion of Health Link's business however.
22 Some of the contracts between Health Link and health care providers may
23 have related to the same insurance companies and HMOs which were parties
24 to separate contracts with Health Link.

25 Health Link's primary business was contracting with health
26 insurance companies and health maintenance organizations (HMOs) to pay
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1 health care providers for services rendered to the insureds or members
2 of the HMOs. Terms of the contracts between Health Link and the
3 insurers and HMOs varied. Some contracts provided that the insurance
4 company or HMO would pay a specific monthly sum to Health Link which sum
5 was the estimated cost of the services needed by the insureds or members
6 of the HMO. If the actual cost of the services was less, Health Link
7 was very profitable. If the actual cost was more, Health Link paid the
8 difference. Other contracts have different terms and generally required
9 Health Link be reimbursed amounts it paid for actual cost of services to
10 the insureds or members. In some situations, it appears no formal
11 contract existed but a course of dealing arose whereby health care
12 providers sent bills to Health Link which paid them on behalf of certain
13 insurance companies or HMOs.

14 In September of 1999, the Chapter 11 proceedings were converted to
15 Chapter 7 proceedings as Health Link's only significant assets were
16 claims against third parties. Health Link's officers and directors were
17 mostly health care providers who for the most part were the same health
18 care providers to be paid by Health Link under its contracts with the
19 insurance companies and HMOs. The debtor alleged claims against
20 individual officers and directors for misfeasance and malfeasance. The
21 claims ranged from embezzlement to negligently failing to review
22 financial records. Essentially most of the claims were based upon an
23 allegation that officers or directors acted in their own self interest
24 as a health care provider and not in Health Link's best interest. Many
25 officers and directors were elected to the position as a representative
26 of an institutional health care provider. Health Link alleged that

1 those institutions were vicariously liable for the misfeasance or
2 malfeasance of certain officers and directors.

3 Two of the three Health Link entities had insurance policies
4 covering errors and omissions of officers and directors. Litigation in
5 federal district court was commenced against the insurance carriers and
6 was resolved by mediation with some millions of dollars recovered by the
7 estate. Many claims against officers and directors have been resolved
8 but some remain unresolved.

9 In federal district court several health care providers sued
10 certain insurance companies and HMOs which had contracted with Health
11 Link and utilized the debtor to process billing by health care providers
12 for services to the insureds and members of the HMO. That case is No.
13 CS-99-140-FVS. The causes of action were similar in that federal court
14 litigation to those in the state court suits now removed to this court.
15 The federal district court cases were mediated and were settled.
16 Although the terms of the settlement are confidential, it resulted in a
17 significant payment to the bankruptcy estate and a release of claims
18 against the estate by the health insurance companies and also provided
19 some of the releases necessary to consummate the settlement of the
20 litigation regarding the directors and officers.

21 Another significant asset of the estate is the approximately 350
22 adversary proceedings it filed alleging voidable preferences. Most
23 defendants are health care providers who received payments within 90
24 days of the bankruptcy filing. The total sought is approximately
25 \$13,000,000. A 38-page Case Management Order has been entered setting
26 the procedure to resolve these adversary proceedings. They involve
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1 significant legal questions such as whether continuing to provide health
2 care services to insureds constitutes new value to the debtor.
3 Currently the adversary proceedings are being mediated.¹

4 There are 1,456 entities listed on the master mailing list. There
5 have been 1,237 proofs of claims filed and, although most of the claims
6 are duplicate, they total some hundreds of millions of dollars. One of
7 the striking features of the bankruptcy proceeding is the number of
8 roles played by the same entities. Typically, a health care provider is
9 an unsecured creditor with claims relating to more than one health
10 insurance carrier or HMO, a defendant in an adversary proceeding
11 alleging a voidable preference, and often defending a claim by Health
12 Link for actions taken as an officer or director. That same health care
13 provider may be a party to a contract under which Health Link acted as
14 the health care provider's agent in negotiating contracts with certain
15 insurance companies or HMOs. To further complicate the situation, many
16 of the health care providers are large institutions consisting of
17 various related entities each of which may play multiple roles.

18 As to plaintiff Empire Health and its related entities, Deaconess
19 Medical Center and Valley Hospital, they are each listed on the
20 schedules as an unsecured creditor. Empire Health filed three proofs of
21 claim which are likely duplicative but are \$2,246,718.50 each. Any
22 recovery by plaintiff in the suits now removed to this court could
23 affect distribution from the estate's assets on that claim. Empire

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25 ¹The Bankruptcy Court and District Court have an active mediation
26 program with a panel of mediators. One mediator has acted in the
27 various cases and has been supplemented by an out-of-district
bankruptcy judge to mediate the adversary proceedings.

1 Health is also a defendant in an adversary alleging a voidable
2 preference payment of approximately \$1,000,000. The defendant Aetna is
3 allegedly a successor-in-interest to NYL Care Health Plans Northwest,
4 Inc. (hereinafter "NYL Care") which was a defendant in the federal court
5 litigation cause No. CS-99-140-FVS brought by various health care
6 providers against various insurance companies on essentially similar
7 theories as these removed cases. That is the litigation which resulted
8 in a release of claims against the estate by the insurance companies and
9 a significant payment to the estate for distribution to health care
10 providers. It is not known how the release given by NYL Care in that
11 litigation will be effected by the suits removed to this court from
12 state court, but some impact is possible. That federal court case No.
13 CS-99-140-FVS had also started in the Superior Court of Spokane County
14 and was removed to federal district court. The plaintiff health care
15 providers in that litigation also filed a Motion for Remand to state
16 court. The federal district court in its order dated December 17, 1999
17 concluded that at a minimum, "related to" jurisdiction existed. The
18 federal district court refused to remand the litigation.

19 "Related to" jurisdiction also exists in this situation. Although
20 the litigation removed to this court is in the very early stages, from
21 reading the pleadings, it is apparent that one of the necessary results
22 of the litigation will be to determine the basis of the transfer of
23 premiums from defendant Aetna to Health Link. In order to address
24 Aetna's affirmative defense that the transfer of the funds to Health
25 Link satisfied any obligation to pay plaintiff for services, the court
26 must examine the relationship between Health Link and Aetna and the
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1 relationship between Health Link and the plaintiff. If the
2 determination is made that Health Link was acting as either Aetna's or
3 plaintiff's agent, that determination will impact the rights and duties
4 of Health Link. If the determination is made that Health Link was
5 acting merely as a billing service, that too, impacts the rights and
6 duties of Health Link. In the briefing regarding the Motions for
7 Remand, the parties raise the possibility that the funds transferred
8 from Aetna to Health Link were held in a constructive trust for the
9 benefit of the health care providers. Such a determination would mean
10 that any such funds held at the time of filing would not be property of
11 the estate which would certainly impact the administration of the
12 estate.

13 The cases removed to this court also raise issues regarding the
14 course of dealing or possible contractual relationship between Health
15 Link and the plaintiff. Plaintiff alleged it had no contract with
16 Health Link and submitted billings to it at Aetna's direction. Aetna
17 generally denies this allegation and raises as an affirmative defense
18 that to the extent funds were given to Health Link, that satisfied its
19 duty to pay plaintiff. In order to resolve the question of liability of
20 Aetna to plaintiff, the facts and circumstances surrounding the
21 plaintiff's submission of billings to Health Link must be examined.
22 That examination may well result in a determination of Health Link's
23 legal relationship and duties to plaintiff.

24 The test to determine "related to" jurisdiction is one of
25 conceivable or possible impact, not one of actual foreseeable impact on
26 the estate. Under the circumstances of this bankruptcy proceeding, any
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1 determination of the nature of the relationship between Health Link and
2 Aetna as it relates to the plaintiff would most likely impact the estate
3 and other creditors as this plaintiff is not the only health care
4 provider rendering services to Aetna's insurers and submitting bills to
5 Health Link. The same is true as to any relationship between Health
6 Link and the state. If the litigation results in factual findings as to
7 the relationship between Health Link and plaintiff, those factual
8 findings could determine Health Link's legal relationship to the
9 plaintiff. Consequently, at a minimum, "related to" jurisdiction exists
10 under 28 U.S.C. § 1334 rendering removal proper under 28 U.S.C.
11 § 1452(a).

12 **SHOULD THE SUITS BE REMANDED UNDER 28 U.S.C. § 1452(b)?**

13 When considering a request to remand a suit to state court under
14 28 U.S.C. § 1452(b), a bankruptcy court exercises its equitable
15 jurisdiction and determines whether it is in the best interest of
16 justice to retain or remand the suit. The factors it considers are
17 essentially the same as those considered in determining whether
18 discretionary abstention should occur. Case law analyzing discretionary
19 abstention under 28 U.S.C. § 1334(c)(2) is relevant, but the ultimate
20 determination whether remand is appropriate is determined under
21 28 U.S.C. § 1452(b).

22 In determining whether equity requires remand, the court is to
23 consider whether the bankruptcy court or state court would be the most
24 convenient to the parties, whether the original forum has expertise in
25 the subject matter of the dispute, and judicial economy and efficiency.
26 This later also includes the economic impact upon the parties to resolve
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1 the dispute in a particular forum as well as whether related cases are
2 pending in either forum. *Billington v. Winograde (In re Hotel Mt.*
3 *Lassen*, 207 B.R. 935 (Bankr. E.D. Cal. 1997). Factors which have been
4 applied in determining discretionary abstention are the extent to which
5 state law issues predominate and whether such issues are unsettled under
6 state law and the feasibility or desirability of severing such issues.
7 The burden on the bankruptcy court's docket is to be considered as is
8 the existence of a right to jury, the desires of non-debtor parties to
9 the litigation and whether it is likely that one party has engaged in
10 forum shopping. *In re Tucson Estates, Inc.*, 912 F.2d 1162, (9th Cir.
11 1990). *Williams v. Shell Oil Co.*, 169 B.R. 684 (S.D. Cal. 1994);
12 *Schulman v. California (In re Lazar)*, 237 F.3d 967 (9th Cir. 2001).

13 These suits removed to this court predominately involve factual
14 issues regarding the transfer of payments for health care providers from
15 Aetna to Health Link. Underlying legal issues are whether a contract
16 was created and how the transfer impacted any duty of Aetna to pay
17 health care providers for services to its insureds. The nature of the
18 contract or course of dealing between Aetna and Health Link is primarily
19 basic contract law. The contract course of dealing between Aetna and
20 the plaintiff is also primarily one of basic contract law. Possibly
21 there will be a federal issue in the suits involving the state as to
22 that portion of the suits which relate to Medicaid funds.

23 This court sits roughly six blocks from the Superior Court of
24 Spokane County. Convenience does not appear to be a factor. Nor do
25 efficiency or economic impact on the parties appear to be a factor. The
26 suits were removed promptly after service and no discovery has occurred,
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1 but can occur just as efficiently and economically in one court as the
2 other. Nor is there any right to a jury trial to be considered.

3 As to judicial economy and burden, both the Superior Court and the
4 Bankruptcy Court have heavy dockets. However, this court regularly sets
5 aside judicial days to hear Health Link matters and there is no
6 indication that the state court would more readily be available to hear
7 discovery disputes, motions, etc. As to trials of the cases, this court
8 provides a firm trial date to parties at its scheduling conferences and
9 believes that trial could occur in either court whenever the parties are
10 ready.

11 As set forth above in greater detail, the legal and factual
12 disputes and issues involving the Health Link estate form a very
13 complicated picture. These suits removed from state court are a
14 fragment of that picture and cannot easily be severed from it. The
15 picture shows a pattern of interlocking, overlapping and occasionally
16 conflicting relationships among various related and unrelated entities.
17 To remove the relationship between Health Link and Aetna from the
18 picture, even just that portion which relates to this health care
19 provider, has the potential of distorting other portions of the picture.

20 There are also advantages to these parties remaining in federal
21 court. If the parties wish to mediate, there is a mediator available
22 with a thorough background in the Health Link matter who could
23 expeditiously assist the parties. Should the parties not wish to
24 mediate, they have available either a district or bankruptcy court judge
25 with background in the matter. It seems neither economical or efficient
26 to resolve this factual dispute before a court which is not familiar

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1 with the parties or the business milieu in which the transactions
2 occurred.

3 Therefore, Plaintiff's Motions for Remand are **DENIED** and the court
4 will enter orders to that effect.

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

7 DATED this 11th day of July, 2001.

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10 PATRICIA C. WILLIAMS, Bankruptcy Judge

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