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STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

11 IDAHIRMA YERO, et al.,
12 Applicants,

13 v.

14 CALIFORNIA INSURANCE
15 GUARANTEE ASSOCIATION, et al,
16 Defendants.

Case No. VNO 0406036, et al.
(Consolidation Master File)

Mark L. Kahn, Associate Chief Judge
Workers' Compensation Appeals Board
6150 Van Nuys Boulevard, Room 105
Van Nuys, CA 91401-3373

Consolidation Order: June 7, 2004

17 PREMIER MEDICAL MANAGEMENT
18 SYSTEMS, INC. (aka Delta Management
19 Group, DMG, Premier Management,
20 Premier Medical and Premier Billing) on
21 behalf of various providers (See Appendix
22 1 attached),

Lien Claimants and
Real Parties in
Interest.

CASE OUTLINE

Hearing: October 19, 2007 at 10:00 AM

INTRODUCTION

On October 2, 2007, Discovery Referee Steven Siemers requested that Defendants articulate their contentions and allegations in order that he can quickly and expeditiously address discovery disputes. This response is only on behalf of Defendants Insurance Company of the West, The Explorer Insurance Company, and Travelers Property & Casualty Company of America, (hereinafter collectively referred

1 to as “Defendants”). Due to the fact that Premier has repeatedly failed and refused to
2 provide responses to Defendants’ discovery for three years, this case outline is largely
3 based upon information and belief drawn from various sources. Discovery is needed
4 to obtain critical evidence first by documents and then by depositions.

6 **SYNOPSIS**

7 The Premier business plan is to obtain maximum profits from workers’
8 compensation cases through the provision of Premier controlled medical, chiropractic,
9 and physical therapy services together with all ancillary services such as interpreting,
10 transportation, durable medical equipment, prescription medications, and ambulatory
11 surgery centers. The Premier business enterprise consists of a highly complex network
12 of providers seeking to profit from Los Angeles area workers’ compensation cases
13 primarily involving Hispanic employees who have sustained relatively minor strains
14 and sprains.

15 Even though Premier is not licensed to practice medicine, chiropractic, or
16 physical therapy, Premier executives manage and control all aspects of the network in
17 exchange for kickbacks and fee splits. Typically, Premier case managers direct
18 patients to a dozen different Premier Providers for diagnostic tests and treatment
19 modalities creating tens of thousands of dollars worth of WCAB liens. The provided
20 services are not medically necessary based upon any nationally recognized evidence
21 based peer reviewed guideline or protocol. The bills themselves are upcoded. Medical
22 legal reports are created and edited by Premier which affixes physician signature
23 stamps to the reports. Premier lien collectors became permanent fixtures at the various
24 Southern California district offices of the WCAB, clogging the lien calendars at the
25 Los Angeles, Van Nuys, Santa Monica, Riverside, San Bernardino, Pomona, and Long
26 Beach district offices.

27 Exhibit “A” is a partial organizational chart of the Premier Enterprise. Exhibit
28 “B” is a list of 278 witnesses and entities Defendants have thus far identified. Exhibit

1 “C” is a list identifying the known Premier Providers. Exhibit “D” is an index of the
2 known WCAB pleadings measuring five (5) linear feet.¹

3 In the spring of 2004, several Defendants successfully obtained consolidation
4 and stay orders for purposes of obtaining discovery from Premier. In opposition,
5 Premier President David Fish submitted a declaration claiming that the dispute
6 involved \$70 million in unpaid Premier Provider bills. (See Declaration of David
7 Wayne Fish dated August 26, 2004).

8 The exact scope of this consolidation remains murky, as Premier has failed to
9 fully identify all of the Premier Providers, falsely claimed that other providers were not
10 Premier Providers, and their lawyers have filed authorized verified pleadings in the
11 names of Premier Providers without client consent. Premier lawyers filed a verified
12 Petition for Writ of Review challenging the consolidation and stay order on behalf of
13 Harvard Surgery Center and Christopher Charbonnet, M.D., each of whom have
14 disavowed authorization or knowledge. (See Exhibit “E”). Last year, Riley & Reiner
15 sought to have 5 Star Interpreting Services, Benefit Surgery Center, Beverly Hills
16 Doctor Surgery Center, Harvard Surgery Center, and Inland Surgery Center removed
17 from the consolidation as not being Premier Providers. On November 6, 2006,
18 Defendants submitted an opposition providing documentary proof that each was in fact
19 a Premier Provider. Premier has failed to produce all unresolved bills, notwithstanding
20 Judge Kahn’s orders of February 3, 2006. Premier has likewise continued to refuse to
21 identify all involved CIGA cases, notwithstanding Judge Kahn’s order of February 3,
22 2006.

23
24 **SCOPE OF DISCOVERY**

25 Judge Kahn has repeatedly ruled that Defendants have made a sufficient *prima*
26 *facie* showing to justify consolidation and stay for purposes of discovery by the
27 _____

28 ¹ Copies of any filed documents not included in the index should be served upon Defendants.

1 Defendants into Premier’s business organization, practices, and procedures. Premier
2 unsuccessfully challenged the consolidation and stay orders four times.
3 (Reconsideration and/or Removal denied February 15, 2005; September 6, 2005; and
4 April 30, 2007; Petition for Writ of Review denied August 4, 2005, with Lab. Code §
5 5813 sanctions imposed against Premier).

6 Premier also attempted to derail the consolidation and stay by filing two civil
7 RICO lawsuits against the WCAB defendants, each of which resulted in dismissal as a
8 SLAPP suit for which Defendants have obtained judgments against the Premier
9 plaintiffs for attorney fees and costs. (See *Premier Medical Management Systems,*
10 *Inc., et al. v. California Insurance Guarantee Assn.* (2006) 136 Cal.App.45h 464; 71
11 Cal.Comp.Cases 210; *Premier Medical Management Systems, Inc. v Travelers*
12 *Insurance et. al.* Los Angeles County Civil No. BC335666).

13 Having filed and served millions of dollars worth of WCAB liens and bills,
14 Premier has placed at issue the lawfulness of their business structure, practices, and
15 procedures. Defendants are entitled to obtain discovery to defend themselves. Judge
16 Kahn’s prior orders clearly define the permissible scope of discovery:

17 “Defendants are denying liability for the liens on various theories
18 including but not limited to improper referral, kickbacks, upcoding,
19 unlawful practice of physical therapy, and unlawful practice of
20 chiropractic. Only one of the issues is illegal practice of
21 medicine....Until discovery is complete and issues are framed it is
22 premature to decide any issues.” (Opinion on Decision & Order,
23 November 30, 2004, index item 57).

24
25 For three years, Premier repeatedly ignored or refused to comply with
26 Defendants’ multiple discovery requests, citing to an ongoing criminal investigation by
27 the Los Angeles County District Attorney and asserting Fifth Amendment privilege on
28 the part of Premier and its executives. (See Objections to Notice to Appear dated

1 October 14, 2004 (index item 50); Objections to Notice of Depositions of Fish, Bacino,
2 and Bartlett dated January 30, 2006 (index item 163)).

3 On September 21, 2007, a search warrant was served on Premier by the Los
4 Angeles County District Attorney and a multi-agency criminal task force including the
5 Department of Insurance Fraud Division, Franchise Tax Board Investigations Bureau,
6 United States Postal Inspection Service, and the Internal Revenue Service. When the
7 affidavit for issuance of the search warrant is released to the public, Defendants will
8 file and serve a copy to further augment this Case Outline.

9 10 **BACKGROUND**

11 David Fish has long sought to profit from the California workers' compensation
12 system. On October 23, 1990, he started a company in San Diego called Future Health
13 Care Centers, Inc. Future Health was owned by two lay persons and was never licensed
14 to practice medicine or chiropractic. Future Health hired chiropractors and a physician
15 as its employees, solicited workers compensation applicant cases, and quickly
16 generated millions of dollars worth of WCAB liens at the San Diego district office.
17 Several Defendants challenged the unlawfulness of Future Health's engagement in the
18 unauthorized corporate practice of medicine and chiropractic at the WCAB. After a
19 protracted discovery battle, Future Health's physician contracts were ultimately
20 produced and clearly evidenced that each physician was an employee of Future Health.
21 Future Health then engaged the law firm of Davis Wright Tremaine, which specializes
22 in health law issues, to revise its contracts.

23 On March 23, 1993, Future Health filed a civil lawsuit against the WCAB
24 Defendants and their lawyers Heggensss & Sweet. (*Future Health Care Centers, Inc.,*
25 *et al. v. Clifford Sweet, et al.* San Diego Civil No. 662532). After the civil suit was
26 summarily dismissed, Future Health's lawyers were sued for malicious prosecution on
27 November 2, 1994 (*Heggeness & Sweet v. R. Craig Clark, et al.* San Diego Civil No.
28 682401). David Fish and his partner John Dyrek were subsequently convicted of

1 capping and steering workers' compensation cases from a local hospital emergency
2 room. (*People v. David Wayne Fish* San Diego Criminal Case SCD110091 filed
3 January 26, 1995).

4 5 **PREMIER MEDICAL MANAGEMENT, INC.**

6 On August 28, 1998, David Fish incorporated Premier Medical Management
7 Systems, Inc., ("Premier") of which David Fish owned 540 shares (54%), attorney
8 Daniel Hurt owned 350 shares (35%), and James Drew owned 110 shares (11%). Fish,
9 Hurt, Drew, and Premier have never been licensed to practice medicine, chiropractic,
10 or physical therapy. On September 1, 2002, Hurt sold his 350 shares to San Diego
11 attorney B. Gregory Bacino for \$5.2 million. Bacino has never been licensed to
12 practice medicine, chiropractic, or physical therapy.

13 A key Premier executive was Jeffrey Scott Barlett who was in charge of
14 marketing and collections and who owns 333.33 shares of Law Offices of Raymond L.
15 Riley, Inc. (Exhibit "F"). On August 3, 2004, Bartlett was charged with engaging in a
16 multi-state insurance fraud operation involving a capping service disguised as a lawyer
17 referral service called "1-800-A-LAWYER" and is now awaiting trial. Other key
18 executives include Rebecka Bartlett (bookkeeping), A. Eli Galam (collections),
19 Claudia Nieto (marketing), Victoria Barronson (marketing), Dean Groscost (Skyline
20 Medical Management, Inc.), and Esmeralda Campo (billing).

21 Premier's business plan has always been limited to providing services for
22 primarily Hispanic injured workers in the Los Angeles metropolitan area for which
23 Premier would get a percentage of billing and would collect WCAB liens. Services
24 include medical examination and treatment; chiropractic examination and treatment;
25 physical therapy, durable medical equipment; ambulatory surgical fees; diagnostic
26 testing; prescription medications; medical transportation; and interpreting. Fish,
27 Bacino, and Bartlett acquired ownership interests in some of the providers, such as
28 DMEC (a provider of durable medical equipment); Laine Management Associates, Inc.

1 (provider of medications); 5-Star Interpreting Services (provider of Spanish/English
2 interpreters); and Premier Transport (medial transportation). (See Exhibit “A”).

4 UNLAWFUL PRACTICE OF HEALING ARTS

5 Having learned a lesson from his experience with Future Health Care Centers,
6 Inc., in San Diego three years previous, Premier used the health care law firm of Davis
7 Wright Tremaine² to craft what on paper would appear to be an arrangement whereby
8 a physician would hire Premier to provide independent contractor services providing
9 “technical, management, and administrative services in connection with the medical
10 care of patients who require diagnosis and treatment of industrial and occupational
11 illness or injuries.” Premier would be paid 40% to 85% of the collected physician
12 billings, and 20% of any surgical collections. (By way of an example, see Exhibit
13 “G”)³.

14 Defendants contend that the contracts are a sham, and that the physicians were
15 *de facto* employees of Premier—just like what had happened earlier at Future Health
16 in San Diego. Defendants believe that the evidence will show that Premier had
17 complete “command and control” over the physicians and the business practices, to
18 wit:

- 19 1. Only patients procured by Premier would be seen by the physicians at
20 Premier owned store-front facilities located at 3330 Wilshire Boulevard
21 in Los Angeles; 14526 Roscoe Boulevard #200 in Panorama City; 3391
22 Long Beach Boulevard in Long Beach; 4150 E. Latham #A in Riverside;

24 ² By filing a declaration in this case attesting to the lawfulness of Premier’s contracts with
25 physicians, Davis Wright Tremaine lawyer Thomas Jeffery has made himself a percipient
26 witness that Defendants intend to depose. Davis Wright Tremaine withdrew from
representation of Premier on February 28, 2005.

27 ³ Similar contracts with Rahil Khan, M.D., Christopher Charbonnet, M.D., Benefit Surgery
28 Center, and Beverly Hills Surgery Center have previously been filed at index items 36, 146
and 300.

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and 1810 E. Elma Court in Ontario. Patients were not seen in the physician’s own independent medical office or clinic.

- 2. As Premier physicians came and went over time, the patients and their charts remained with Premier.
- 3. Premier directed a common treatment/referral protocol regardless of the patient’s injury or condition, which included referrals only to other Premier Providers. Patients were never referred to a non-Premier provider for testing or treatment.
- 4. Premier had complete control of the finances, including checking accounts.
- 5. Premier used chiropractors and others to prepare medical reports. Typically, Premier provider medical legal reports are not signed by the Premier physicians. Instead, Premier personnel affix signature stamps to medical-legal reports. (See Exhibit H relating to *Carlos Garcia-Ayala v. Lasco Bathware* RIV 0050124).

By way of an example, Jerome Hall, M.D. was at one time a Premier Provider. When he complained about Premier’s control over medical issues and quit, Premier sued him (See *Premier Medical Management System, Inc. v. Jerome Hall, M.D.* Los Angeles County Civil No. BC291948, a copy of which is attached as Exhibit “I”).

As a consequence, Defendants contend that Premier has *de facto* unlawfully engaged in the corporate practice of medicine, chiropractic, and physical therapy, and for that reason Defendants have no liability of any of the resultant bills and WCAB liens. Moreover, Defendants contend that the Premier Enterprise Network is a *de facto* criminal “pay-to-play” capping and steering business, and for that reason Defendants have no liability of any of the resultant bills and WCAB liens.

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UNLAWFUL PROUCUREMENT OF PATIENTS

Defendants are informed and believe that Premier hired “marketers” to solicit lawyers, law office personnel, and others to steer and refer workers’ compensation patients to the Premier medical clinics. (See *Zenith v. Premier, et al.* Los Angeles County Civil No. BC258502 filed September 24, 2001, attached as Exhibit “J”). Defendants suspect that patient referrals were induced through lavish entertainment and kickbacks. Defendants suspect that Premier may have also obtained referrals from phony attorney referral “hotlines” such as Bartlett’s “1-800-A-LAWYER.”

At one point, Premier and the manager of Premier’s San Fernando Valley store-front clinic got into a business dispute which resulted in Premier filing a civil suit. (See *Sobol Management, Inc. and Premier Medical Management System, Inc. v. Sidney Cobos, et al.* Los Angeles County Civil No. LC065313 filed January 13, 2003, a copy of which was filed herein with a request for judicial notice on September 16, 2004, index item 37). Premier executives Fish, Bacino, and Drew entered a written agreement for future cross referrals of patients and the division of applicant attorneys. (See Exhibit “K”).

UNLAWFUL BILLING

Defendants are informed and believe that Premier usually and customarily would “upcode” billing –that is, using a CPT code to bill for a higher level of service than that actually rendered. Premier’s pattern and practice of billing code manipulation is discussed at length in *Zenith v. Premier, et al.* Los Angeles County Civil No. BC258502 filed September 24, 2001. (See as Exhibit “J”).

UNLAWFUL BUSINESS PRACTICES

Because Premier executives dictated the diagnostic and treatment protocols to enhance Premier’s profits arising from the fee-splitting kickbacks, it is not surprising that the medical decision making by Premier’s unlicensed managers had nothing to do

1 with real medical necessity. Defendants believe that the evidence will show that none
2 of the Premier patients were provided appropriate diagnostic tests or treatment
3 supported by the rebuttably correct American College of Occupational and
4 Environmental Medicine *Occupational Medicine Practice Guidelines* 2nd Edition, or
5 any other nationally recognized evidence based peer reviewed guideline or protocol.

6 By way of an example only, in the case of *Uriel De La Torre v. Galpin Motors,*
7 *Inc. and Explorer Insurance* VNO 0403937, the worker suffered a minor lumbar
8 muscle strain on October 19, 1999. On February 17, 2000 he engaged counsel and was
9 immediately referred to the Premier Enterprise which ran up a stunning \$84,756.38
10 worth of WCAB billing and liens. (See Exhibit “L”). Premier’s testing and treatment
11 was not medically necessary or supported by any standard of evidence-based medicine.
12 (See Exhibit “M”).

13 By way of other examples, in the case of *Baldomero Beltran v. Gonzales*
14 *Painting Corp. and Explorer Insurance* RIV 0056935, the employee alleged an injury
15 to his right hand. Premier providers, including 5 Star Interpreting, billed a combined
16 total of \$12,322.15. In the case of *Stefanie Petzker v. Cingular Wireless and Explorer*
17 *Insurance* SBR 0308111, the employee alleged injuries due to a claimed assault by co-
18 workers. Premier providers billed a combined total of \$31,015.00. On December 16,
19 2003, Petzker pled guilty to workers’ compensation insurance fraud in *People v.*
20 *Stefanie Petzker* San Bernardino County Criminal No. FSB039200. On December 14,
21 2004, Beltran pled guilty to workers’ compensation insurance fraud in *People v*
22 *Baldomer Beltran Chairez* Riverside County Criminal Case RIF117217.

23
24 **PENDING DISCOVERY**

25 Prior to deposing Premier executives, managers, and third parties (see Exhibit
26 “B”), Defendants seek the production of documents relating to Premier’s business
27 organization, practices, and procedures consistent with Judge Kahn’s prior orders.

28 ///

1 Defendants' seek:

- 2 1. Compliance with a WCAB SDT directed to Premier dated
3 September 17, 2004.
- 4 2. Compliance with WCAB SDT directed to 22 entities and
5 individuals dated October, 2005.
- 6 3. Compliance with a request for production of documents directed
7 to all known Premier Providers dated September 29, 2006.

8 The evidence sought addresses some very serious questions of fact pending in
9 this consolidated litigation, making each request highly relevant. Specifically, each
10 document requested is relevant to the issue of whether Premier is engaged in the
11 unlawful practice of medicine, the unlawful practice of chiropractic, the unlawful
12 practice of physical therapy, illegal cross-referral of patients, kickbacks, upcoding, and
13 other unlawful business practices. Specifically, Defendants seek discovery of the
14 following broad categories of documents:

- 15 A. Documents relating to the *de facto* unlawful corporate practice of
16 medicine, chiropractic, and physical therapy.
- 17 B. Documents relating to the structure of the Premier Enterprise
18 network (See Exhibit "A").
- 19 C. Documents relating to Premier's marketing for and procurement
20 of patients.
- 21 D. Documents relating to the unlawful splitting of fees and payments
22 of kickbacks as between Premier and each provider of services
23 (See Exhibit "A").
- 24 E. Documents relating to all outstanding bills and liens for which
25 Premier now seeks payment from Defendants.
- 26 F. Documents relating to Premier's policies and procedures for
27 treatment protocols.

- 1 G. Documents relating to medical necessity for Premier's treatment
- 2 protocols.
- 3 H. Documents relating to Premier's policies and procedures for
- 4 patient referrals.
- 5 I. Documents relating to Premier's policies and procedures for the
- 6 preparation of bills and CPT coding for services.
- 7 J. Documents relating to which entities were Premier Providers for
- 8 what periods of time.
- 9 K. Documents relating to which entities are actually clients of the
- 10 Premier lawyers Riley & Reiner.

11 Premier has no pending discovery directed to any defendant. Their attempt to
12 inappropriately depose the persons most knowledgeable from CIGA was quashed by
13 Judge Kahn in 2004. Their attempt to inappropriately depose the persons most
14 knowledgeable from Travelers was quashed by Judge Kahn on August 4, 2006, when
15 he explicitly ruled that no depositions were to go forward until the document
16 production issues had been addressed.

17
18 DATED: October 16, 2007

HEGGENESS, SWEET,
SIMINGTON & PATRICO, A P.C.

19
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21 By: _____
22 CLIFFORD D. SWEET, III.
23 Attorney for Defendants
24 INSURANCE COMPANY OF THE WEST,
25 THE EXPLORER INSURANCE COMPANY,
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PROOF OF SERVICE

I declare under penalty of perjury as follows: I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is: Law Office of Heggeness, Sweet, Simington & Patrico, A P.C., 7071 Convoy Court, Suite 200, San Diego, CA 92111-1023.

On **October 16, 2007**, I served the foregoing document(s) described as:

CASE OUTLINE DATED 10/16/07

on the following interested parties in the attached service list as follows:

VIA U.S. MAIL By placing a true and correct copy of the foregoing document(s) in an envelope addressed to each person identified in the attached service list for mailing. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT AIR COURIER SERVICE By placing a true and correct copy of the foregoing document(s) in an envelope addressed to each person identified in the attached service list for overnight air courier service. I caused such envelope to be delivered to an overnight air courier service with instructions to personally deliver same to the offices of the addressee on the next business day.

VIA FACSIMILE TRANSMISSION By transmitting a true and correct copy via facsimile to the person and telephone number identified in the attached service list pursuant to California Rules of Court, Rule 2008. The facsimile machine I used complied with California Rules of Court, Rule 2003. The facsimile machine reported no transmission error. I caused the facsimile machine to print a transmission record of the transmission, a true and correct copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the same was executed by me at San Diego, California on October 16, 2007.

Tasha Forbes

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7 **Original Filed:**

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