

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: IMPULSE MONITORING, INC., HUMANA
INTRAOPERATIVE MONITORING SERVICES
CLAIMS AND EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION**

MDL No. 2596

ORDER DENYING TRANSFER

Before the Panel:* Defendant Humana Health Plan, Inc. (Humana) move under 28 U.S.C. § 1407 to centralize this litigation concerning its failure to pay for health benefit reimbursement for intraoperative neuromonitoring services in the Western District of Tennessee or, alternatively, the Northern District of Georgia. Common plaintiff Impulse Monitoring, Inc. (Impulse) opposes centralization and, alternatively, suggests centralization in the Southern District of California or the Western District of Tennessee. This litigation currently consists of 57 actions¹ listed on Schedule A and pending in eleven districts.

After considering all argument of counsel, we conclude that Section 1407 centralization is not appropriate at this time. The actions here unquestionably involve common factual issues surrounding Humana's failure to pay Impulse's claims for the costs of intraoperative neuromonitoring services, which ranged in the actions before us from approximately \$2000 to \$13,500.² We are unconvinced, on the record before us, that the issues remaining in this litigation are sufficiently complex or numerous to warrant the creation of an MDL. Specifically, at oral argument, the parties informed us that they had resolved Humana's concerns about fraud and abuse issues surrounding these claims and that payment had commenced in some of Impulse's recent submission of claims in Medicare Advantage plans. The primary dispute in this litigation, according to counsel, now centers on purported billing and coding errors.

Given the lack of complexity of the remaining disputed issues (*i.e.*, billing and coding errors) and the limited number of involved counsel, we conclude that centralization is not necessary to serve the convenience of the parties and witnesses or promote the just and efficient conduct of the actions. At oral argument, counsel for Humana and Impulse – the only parties to this litigation – appeared to be effectively cooperating to resolve the remaining issues in this litigation. We encourage these efforts to continue and observe that alternatives to formal centralization – such as voluntary cooperation among the involved

* Judge Lewis A. Kaplan did not participate in the decision of this matter.

¹ Defendant's motion initially included 58 actions but, during briefing, a Western District of Texas action was dismissed.

² All plans at issue in this litigation, whether Medicare Advantage or private plans governed by ERISA, were administered by Humana.

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counsel and judges – appear to be workable and, in our judgment, preferable to centralization in these circumstances. *See, e.g., In re Crest Sensitivity Treatment and Prot. Toothpaste Mktg. and Sales Practices Litig.*, 867 F. Supp. 2d 1348 (J.P.M.L. 2012).

IT IS THEREFORE ORDERED that Humana's motion for Section 1407 centralization of the actions listed on Schedule A is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

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SCHEDULE A

Northern District of Georgia

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01637
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01639
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01640
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01641
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01642
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01643
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01644
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01645
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01646
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01647
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01649
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01650
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01651
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01652
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01653
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01654
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01655
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,

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C.A. No. 1:14-01656
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02039
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02053
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02054
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02056
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02058
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02059
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02060
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02061

District of Minnesota

IMPULSE MONITORING, INC., ET AL. v. HUMANA HEALTH PLAN, INC.,
ET AL., C.A. No. 0:14-01815
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 0:14-02146

Eastern District of North Carolina

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 5:14-00327
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 5:14-00328
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 5:14-00329
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 7:14-00103

Western District of North Carolina

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 2:14-00021
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00296
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00297

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District of South Carolina

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN INC.,
C.A. No. 3:14-02052
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN INC.,
C.A. No. 3:14-02280
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN INC.,
C.A. No. 4:14-02050
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN INC.,
C.A. No. 4:14-02154

Eastern District of Tennessee

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00250
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00313
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00314

Middle District of Tennessee

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 2:14-00055
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-01253
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-01254
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-01407
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-01438

Western District of Tennessee

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01124
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01125
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01131
IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-01158

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IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 1:14-02514

Western District of Texas

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00215

Western District of Virginia

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 6:14-00017

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 7:14-00308

Northern District of West Virginia

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00050

IMPULSE MONITORING, INC. v. HUMANA HEALTH PLAN, INC.,
C.A. No. 3:14-00051