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September 8, 2020

The Honorable Kenneth M. Karas
The Hon. Charles L. Brieant Federal Building
And United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: *United States ex rel Cutler v. Cigna Corp. et al.*, No. 17 Civ. 7515 (KMK),
Request for Pre-Motion Conference for Defendants' Motion to Transfer Venue

Dear Judge Karas:

We write on behalf of Defendants to request a pre-motion conference. Defendants seek to file a motion to transfer venue under 28 U.S.C. § 1404(a) to the Middle District of Tennessee, where the relevant business entities, documents, and witnesses are located. This case has no connection to the Southern District of New York, and the Relator does not live here. Relator does not consent to this motion.

The Court may transfer a civil action “[f]or the convenience of parties and witnesses, in the interest of justice . . . to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). In determining whether transfer is appropriate, a court first asks “whether the case could have been brought in the proposed transferee district.” *Mastr Asset Backed Secs Tr. 2007-WMCI v. WMC Mortg. LLC*, 880 F. Supp. 2d 418, 421 (S.D.N.Y. 2012). This condition is easily met. The case could have been brought in the Middle District of Tennessee as that court has jurisdiction under 28 U.S.C. § 1331 and 31 U.S.C. § 3732. The Middle District of Tennessee also has personal jurisdiction given Cigna’s significant business interests in Tennessee, including the principal place of business of two of the named defendants: HealthSpring, Inc. and NewQuest, LLC. *See* Am. Compl. ¶¶ 11–13. Finally, venue is proper in Tennessee because “a substantial part of the events” giving rise to Relator’s claims occurred there. 28 U.S.C. § 1391(b)(2). This case involves False Claims Act allegations related to Cigna’s Medicare Advantage (“MA”) business, which Cigna runs substantially out of Tennessee. *See* Am. Compl. ¶ 13.

A court next considers several factors in deciding whether transfer is warranted: “(1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of the unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum’s familiarity with the governing law; (8) the weight accorded to the plaintiff’s choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality

of circumstances.” *Johnson v. Brown*, No. 20 Civ. 3280 (KMK), 2020 WL 2904849, at *4 (S.D.N.Y. June 3, 2020).

These factors strongly favor transfer. This case is about Cigna’s MA business, and specifically its “360 program.” MA organizations provide Medicare beneficiaries with health benefits under Medicare Part C. CMS pays MA organizations based on estimates of how much it will cost to treat beneficiaries each year. Those estimates are based, in part, on the relative wellness of members, as determined by the submission of codes corresponding to their health conditions. To ensure that its members are diagnosed and treated properly for all conditions, Cigna conducts an annual “360 exam”—a comprehensive health assessment—on as many members as possible. Although most 360 exams are conducted by primary care physicians in their offices, some are performed by nurse practitioners and other appropriate practitioners who travel to members’ homes. CMS has long recognized that such “in-home assessments can have significant value as care planning and coordination tools,” CMS, Announcement of Calendar Year 2016 Medicare Advantage Capitation Rates, 145 (Apr. 2015), and are “used as a tool to identify enrollee diagnoses that can be submitted to CMS” to record members’ health conditions, CMS, Advanced Notice of Methodological Changes for Calendar Year 2014, 22 (Feb. 2013).

Cigna’s MA business generally, and the 360 program specifically, are run by Cigna-Healthspring (now known as Cigna Medicare), which is located in Tennessee. This is because Cigna’s MA business is largely the result of Cigna’s 2011 acquisition of HealthSpring, which, at the time, was a standalone company based in Nashville, TN. Thus, most of the material witnesses, the documents, and the data relevant to this case are in Tennessee. That includes the employees who are responsible for the design of the 360 program, those who conduct quality oversight of the 360 program, and those who oversee the collection of diagnosis codes from the 360 exams that are ultimately submitted to CMS. These facts heavily favor transfer: “Convenience of both the party and non-party witnesses is probably the single-most important factor in the analysis of whether transfer should be granted.” *Fuji Photo Film Co., Ltd. v. Lexar Media, Inc.*, 415 F. Supp. 2d 370, 373 (S.D.N.Y. 2006) (internal citation omitted). For all of these same reasons, “the locus of operative facts” is in Tennessee. *See Johnson*, 2020 WL 2904849, at *4.

By contrast, none of the business operations, documents, or witnesses related to Relator’s allegations are in (or are even near) New York. The relevant entities are not headquartered in New York. To Defendants’ knowledge, none of the employees directly involved in overseeing or operating the 360 program lives in the Southern District of New York. None of the documents relevant to this case are in New York. Indeed, Cigna does not even maintain an MA plan in New York, much less operate the 360 program here. Relator’s own complaint demonstrates this, as it does not identify any business process related to the 360 program that occurs in New York and, moreover, focuses almost entirely on the conduct of Tennessee-based Cigna-Healthspring.

Relator incorrectly suggests that Cigna is an approved MA provider in New York, offering an MA plan to New York City retirees within the state. Am. Compl. ¶ 21. But Cigna’s MA plans

are available to New York retirees *who relocate to Phoenix, Arizona*, where Cigna offers MA plans. And as Relator concedes, none of the Cigna entities are incorporated or maintains a principal place of business in New York. Beyond that, the best Relator can muster is that some “Rx”—i.e., prescription—plans under Medicare Part D are offered in the state, and that Cigna is traded on the New York Stock Exchange. Am. Compl. ¶ 21. But Medicare Part D provides prescription drug coverage, and has nothing to do with Cigna’s 360 program, which is offered under Medicare Part C. Further, the fact that a company’s “stock trades over the New York Stock Exchange . . . does not favor venue in New York.” *City of Pontiac Gen. Emps. Ret. Sys. v. Stryker Corp.*, No. 10 Civ. 376 (RWS), 2010 WL 2035130, at *4 (S.D.N.Y. May 21, 2010); *accord Laborers Local 100 v. Bausch & Lomb Inc.*, No. 06 CIV. 1942 (HB), 2006 WL 1524590, at *4 (S.D.N.Y. June 5, 2006).

No factors materially favor this forum. Although Relator chose to sue in this district, he lives in Connecticut. Am. Compl. ¶ 7. A “plaintiff’s choice of forum is accorded less deference where the plaintiff does not reside in the chosen forum and the operative events did not occur there.” Johnson, 2020 WL 2904849, at *4; *see also Laborers Local 100*, 2006 WL 1524590, at *4 (deference is reduced if “the case lacks material or significant contacts with [the] forum”). Although some of Relator’s former lawyers were located in New York, *see* Am. Compl. at 35, they have now withdrawn from the case and, in any event, that would have been irrelevant, as “[t]he convenience of counsel is not an appropriate factor to consider on a motion to transfer.” *See Fuji Photo*, 415 F. Supp. 2d at 374.

The forum’s familiarity with the governing law—the False Claims Act—is neutral to the analysis, as both jurisdictions have extensive expertise with respect to the Act. *See Orb Factory, Ltd. v. Design Sci. Toys, Ltd.*, 6 F. Supp. 2d 203, 210 (S.D.N.Y. 1998).

Further, a transfer will cause no loss in trial efficiency. “When a case is in its earliest stages, it is generally not inefficient to transfer the case.” *Royal & Sun All. Ins., PLC v. Nippon Express USA, Inc.*, 202 F. Supp. 3d 399, 411 (S.D.N.Y. 2016).

Ultimately, “the Court looks to the center of gravity of the litigation, as judged primarily by the convenience of witnesses.” *Indian Harbor Ins. Co. v. Factory Mut. Ins. Co.*, 419 F. Supp. 2d 395, 402 (S.D.N.Y. 2005) (internal citation omitted). The center of gravity in this case is, in our view, clearly in Tennessee. Accordingly, we would like to move the Court to transfer the action to the Middle District of Tennessee.

For these reasons, Defendants respectfully request a pre-motion conference for its anticipated motion to transfer.

Respectfully submitted,

/s/ Eamon P. Joyce

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