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VIA ELECTRONIC DELIVERY & COURT FILING

The Honorable Andrew L. Carter, Jr.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: ***United States v. Anthem, Inc., 1:20-cv-02593-ALC: Request for Pre-Motion Conference for Defendant's Motion to Transfer Venue to the Southern District of Ohio***

Dear Judge Carter:

We represent the Defendant in this case, Anthem, Inc. ("Anthem" or "the Company"). In accordance with Rule 2(A) of this Court's Individual Rules of Practice, we respectfully request a pre-motion conference related to Anthem's intention to file a motion to transfer venue pursuant to 28 U.S.C. § 1404(a).

The United States, as Plaintiff in this action, alleges that Anthem violated the False Claims Act ("FCA") 31 U.S.C. § 3729 *et seq.* Anthem seeks to transfer this case to the Southern District of Ohio, where the business practices at issue in Plaintiff's Complaint were operated and where the most material witnesses are located. Indeed, more than 40 paragraphs of the Complaint describe business processes or conduct that occurred in Ohio. In contrast, the Complaint's allegations have no meaningful connection to this judicial district and none of the witnesses needed to resolve Plaintiff's claims resides here. Neither party is based in this district; Anthem is an Indiana corporation headquartered in Indianapolis, while Plaintiff is acting through the Centers for Medicare and Medicaid Services ("CMS") which is headquartered in Baltimore, Maryland. The only apparent connection to this district is that Plaintiff's attorneys work here, which this Court and numerous others have held is irrelevant to a change of venue analysis.

Before submitting this letter, Anthem asked Plaintiff whether it would consent to transfer this case to the Southern District of Ohio, but Plaintiff declined.

The Complaint Challenges Business Processes Based in the Southern District of Ohio

This lawsuit relates *exclusively* to the Medicare Advantage ("MA") program, which is also known as Medicare Part C, and Anthem's conduct as a Medicare Advantage Organization ("MAO"). In the MA program, Medicare beneficiaries receive their health benefits through private insurance companies like Anthem—commonly referred to as MAOs—that offer MA plans, rather than through traditional Medicare. Unlike traditional Medicare, where CMS pays healthcare providers based on the services they render to beneficiaries, CMS compensates MAOs prospectively based on the financial risk that the MAOs assume to provide healthcare benefits to

their members. CMS calculates these payments based, in part, on the diagnosis codes that providers submit to MAOs for their members and which the MAOs, in turn, submit to CMS.

Plaintiff's FCA claims fundamentally concern a specific Anthem business practice—its retrospective chart review program, which was based out of the Company's offices in Columbus, Ohio. CMS requires that MAOs report to the agency all of the medical conditions for their members and certify that the submitted data is complete. Because healthcare providers frequently do not report to MAOs all of the diagnosis codes that are documented in the medical charts for their members, and because errors in transmission of that data sometimes result in diagnosis codes not being reported, Anthem and other MAOs operate programs to ensure that the diagnosis codes submitted by healthcare providers are complete. Anthem's retrospective chart review program involved reviewing medical records from its members' visits with their healthcare providers to identify any diagnosis codes that had not been previously sent to CMS, and then the Company submitted those omitted diagnosis codes to the agency. Chart review programs are common in the MA industry; CMS not only knows that Anthem and other MAOs submit additional diagnosis codes identified from these reviews, but CMS program guidance explicitly authorizes the submission of diagnosis code data from chart reviews.

In the Complaint, Plaintiff alleges that when Anthem reviewed medical records to identify diagnosis codes that had not been submitted to CMS, Anthem was ***also*** required to review those same records to identify any diagnosis codes that healthcare providers had erroneously reported to Anthem for those same member visits and that Anthem had then submitted to CMS. During the time period alleged in the Complaint, however, there was no regulation that required Anthem to design its chart reviews in that manner, and none exists today. In fact, CMS proposed such a regulation in 2014 but withdrew it after the agency received industry comments that objected to the proposal. In short, Anthem strongly contests Plaintiff's contention that the Company had a legal obligation to conduct chart reviews in the manner alleged in the Complaint.

To resolve Plaintiff's claims, it will be necessary to understand how Anthem designed and operated its retrospective chart review program, as well as the separate business processes it employed to improve the accuracy of the diagnosis codes it submitted to CMS. None of those processes occurs, or has occurred, in the Southern District of New York and no relevant witnesses live here. Instead, Anthem's retrospective chart review program originated out of Anthem's offices in Columbus, Ohio, was designed by Anthem personnel in those offices, and was operated out of that location for nearly the entire time period at issue in the Complaint.

The Court Should Transfer this Case to Columbus, Ohio, which is the "Center of Gravity" of the Litigation

This Court has discretion to 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). Under this statute, transfer is warranted here. When deciding a motion to transfer venue under § 1404(a), this Court proceeds in two steps. *First*, the Court asks "whether the case could have been brought in the proposed transferee district." *Mastr Asset Backed Secs. Tr. 2007-WMC1 v. WMC Mortg. LLC, ex rel. U.S. Bank Nat'l Ass'n*, 880 F. Supp. 2d 418, 421 (S.D.N.Y. 2012). *Second*, the Court considers a number of factors to decide "whether a transfer is warranted." *Id.* (describing a multi-factor test).

The first step is easily satisfied here because this case could properly have been brought in the Southern District of Ohio. That court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3731. The court also has personal jurisdiction over Anthem due to the

Company's significant business operations in Columbus, Ohio. Additionally, venue is proper in that judicial district because, as further discussed below, "a substantial part of the events or omissions" giving rise to Plaintiff's claims occurred in that district, *see* 28 U.S.C. § 1391(b)(2), and because Anthem "transacts business" in that district, *see* 31 U.S.C. § 3732(a).

Under the second step of the analysis, the multi-factor test strongly favors transfer because Columbus is a far more convenient venue for this litigation, and transferring the case there is in the interest of justice. "The core determination under § 1404(a) is the center of gravity of the litigation, a key test of which is the convenience of witnesses." *Viacom Int'l, Inc. v. Melvin Simon Prods., Inc.*, 774 F. Supp. 858, 868 (S.D.N.Y. 1991). Here, that center of gravity is the Southern District of Ohio.

The Southern District of Ohio is the historical "hub" of Anthem's corporate chart review program; during the time period at issue in the Complaint, the primary personnel who managed and operated that process were located in that district. These employees include the Anthem personnel who created the program itself; supervised Anthem's chart review vendor; developed and managed the quality assurance reviews of the chart review results; and directed the other, separate day-to-day business processes on which Anthem relied to improve the accuracy of provider-submitted diagnosis code data. By contrast, ***none*** of the business processes that are central to Plaintiff's allegations is or was located in New York. To Anthem's knowledge, none of the employees who were directly involved in operating the corporate chart review program or Anthem's data accuracy processes currently lives in the Southern District of New York. And Anthem does not maintain hard copy documents relevant to this case in this judicial district. Plaintiff surely knows that none of the business practices at issue occurred in this district—the Complaint does not reference a single witness who lives here or describe any business processes that occurred here. Indeed, during its three-year investigation, which included depositions of nearly a dozen witnesses, Plaintiff did not depose a single witness who resides here.

The only apparent connection between this judicial district and Plaintiff's claims is that Plaintiff's attorneys work here, a fact this Court and others have consistently held is irrelevant to a change of venue analysis. *See, e.g.*, *Garity v. Tetraphase Pharm. Inc.*, No. 1:18-CV-06797 (ALC), 2019 WL 2314691, at *5 (S.D.N.Y. May 30, 2019) ("The convenience of counsel is not an appropriate factor to consider on a motion to transfer"). The sole connection the Complaint draws to the Southern District of New York is that Anthem "operate[s] dozens of Medicare Part C plans across the United States" including "Empire MediBlue Plus" in New York. (Compl. ¶ 11.) But this unremarkable fact, while perhaps sufficient to show that venue is proper in this district, does not mean that this jurisdiction is the most convenient and suitable forum to litigate the action under § 1404(a).

In summary, none of the business processes material to the claims alleged in the Complaint occurred in this judicial district and none of the witnesses with knowledge of those processes resides here. In fact, to Anthem's knowledge, there is not a single witness for either party with material knowledge who lives in this district. Thus, if the case proceeds in this judicial district, every single witness—for both parties—will need to travel from some other location. Because litigating this action in the Southern District of Ohio will be far more convenient for the witnesses in the case, the Court should transfer the action to that district. In similar circumstances, courts in this district have transferred to other judicial districts FCA suits filed by the United States. *See, e.g.*, *United States v. Nature's Farm Prods., Inc.*, No. 00CIV. 6593(SHS), 2004 WL 1077968, at *3 (S.D.N.Y. May 13, 2004).

Anthem respectfully requests that Your Honor schedule a pre-motion conference in connection with Anthem's anticipated motion to transfer venue under 28 U.S.C. § 1404(a).

Dated: April 14, 2020

Respectfully submitted,

By: /s/ K. Lee Blalack, II

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