



U.S. Department of Justice

United States Attorney
Southern District of New York

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July 19, 2022

By ECF

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

Re: *United States of America v. Anthem, Inc.*, No. 20 Civ. 2593 (ALC) (S.D.N.Y.)

Dear Judge Carter:

This Office represents the United States of America (the “Government”) in the above-referenced matter. We write respectfully in response to the supplemental letter submitted by Defendant Anthem, Inc. (“Anthem”) in support of its pending motion to transfer, citing an order entered in a separate case, *United States ex rel. Cutler v. Cigna Corp.*, No. 17 Civ. 7515 (KMK) (S.D.N.Y.). See ECF No. 55 (“Anthem Letter”); *id.* Ex. B (transcript of September 17, 2021 bench ruling in *Cigna*) (“*Cigna Tr.*”). The facts and circumstances of the *Cigna* order are far afield from this case, and the points in favor of transfer on which the district court relied in *Cigna* do not apply here. As explained in the Government’s omnibus opposition to Anthem’s pending motions to transfer, dismiss, and strike, ECF No. 44 (“Govt. Opp.”), Anthem has not met its burden to show by clear and convincing evidence that the Southern District of Ohio would be a materially more convenient venue in which to litigate this action. *Id.* at 15-27.¹

Like this action, *Cigna* involves claims brought under the False Claims Act against a Medicare Advantage Organization concerning Medicare risk adjustment data submissions to the Centers for Medicare and Medicaid Services. But, as it relates to venue, *Cigna* is entirely distinguishable from this case. Several points of contrast bear emphasis:

- In *Cigna*, the plaintiff—an individual *qui tam* relator, not the United States—claimed that venue was appropriate in the Southern District of New York because, among other things, a private, commercial arbitration proceeding involving *Cigna* had been conducted here. See *Cigna*, ECF No. 77 (“*Cigna Relator Opp.*”) at 19 (claiming that the three arbitrators were “material witnesses” who reside in New York). But neither that arbitration nor New York was even mentioned in the *qui tam* relator’s complaint against *Cigna*, save for general allegations regarding *Cigna*’s business operations and stock listing in New York. *Cigna Tr.* 68:4-6.

¹ It is the Government’s understanding that Anthem’s combined motions to transfer, dismiss, and strike are fully briefed. See ECF Nos. 36-39, 44-50. If the Court would find any further submissions from the Government regarding these motions helpful, we would be happy to provide them.

Indeed, the *Cigna* court held that the plaintiff “couldn’t identify a single operative fact that took place in New York.” *Id.* 67:1-2. Here, by contrast, the Government’s amended complaint alleges numerous specific acts in furtherance of Anthem’s fraud that took place in this district, including misrepresentations made by a senior Anthem official to staff at Weill Cornell Medical Center. Govt. Opp. at 20; ECF No. 26 (“Am. Compl.”) ¶¶ 112-19.

- The *Cigna* court determined that the “genesis and the management” of the allegedly fraudulent scheme in that case took place in Tennessee. *Cigna* Tr. 68:7. Here, by contrast, the Government alleges that Anthem’s fraudulent scheme was orchestrated by executives located around the country—not centered in Ohio. Govt. Opp. at 18-20. As our brief explains, the locus of operative fact analysis “is ultimately about ‘where policy is determined,’” *id.* at 19 (quoting *Pippins v. KPMG LLP*, 11 Civ. 0377 (CM), 2011 WL 1143010, at *5 (S.D.N.Y. Mar. 21, 2011)), not where some portions of the policy were putatively implemented, and that analysis indicates that in this case, the Southern District of Ohio is not a materially more appropriate venue.
- The *Cigna* court held that “the current and former employees who would likely serve as key witnesses [were] all based in Tennessee.” *Cigna* Tr. 63:5-6. Here, by contrast, the Government has identified over half-a-dozen key corporate witnesses who reside outside of Anthem’s preferred venue—including several key witnesses in the Northeast. Govt. Opp. at 21-23. These witnesses include, prominently, non-party witnesses, whose convenience is given the greatest weight. *Id.* at 21.
- The *Cigna* court held that the relator in that case could not identify any “critical witnesses who reside[d] in the Southern District of New York.” *Cigna* Tr. 65:13-14. Here, by contrast, numerous witnesses—including the regional vice president of Anthem’s New York Office and witnesses at Weill Cornell (whose convenience must be prioritized, as non-parties)—reside in the Southern District of New York. Govt. Opp. at 24-25.

In sum, although the complaints in *Cigna* and this action both allege fraud in submission of risk adjustment data in the Medicare Advantage program, that general similarity has nothing to do with the specific factors relating to transfer in the two cases. The *Cigna* decision does not support or bolster Anthem’s transfer arguments here.

Anthem’s incomplete analysis is further highlighted by its selective presentation of recent authority from this District regarding venue in False Claims Act actions involving nationwide fraud. Specifically, Anthem did not alert the Court to Judge McMahon’s recent decision in *United States ex rel. Bassan v. Omnicare, Inc.*, No. 15 Civ. 4179 (CM), 2022 WL 72300 (S.D.N.Y. Jan. 7, 2022). There, in refusing to transfer a False Claims Act action from this District to the Southern District of Ohio, Judge McMahon noted, among other things, that the alleged fraud at issue was a nationwide scheme and that the relevant witnesses were dispersed geographically, *see id.* at *3-4. So too here.

Indeed, Anthem has not contested that the Southern District of New York is an appropriate venue for this action and, for the reasons set forth in the Government’s opposition brief, Anthem

has not established that the Southern District of Ohio would be a materially more convenient venue. Therefore, Anthem's transfer motion should be denied.

Respectfully,

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