



LAW360

**Insurance
Authority**

Cigna, MultiPlan Must Face RICO Claims In ERISA Row

By [Kellie Mejdrich](#) ·

Law360 (September 6, 2022, 7:46 PM EDT) -- A California federal judge ruled [Cigna Health & Life Insurance Co.](#) and [MultiPlan Inc.](#) must face claims from a proposed class of patients who allege the companies colluded to underpay for certain types of mental health and substance use disorder treatments in violation of federal benefits and anti-corruption laws.

U.S. District Judge Edward J. Davila in a 23-page order docketed late Friday denied the bulk of two motions to dismiss from Cigna Health & Life Insurance Co. and MultiPlan Inc., holding that a proposed class of employee health plan beneficiaries had plausibly alleged the companies engaged in a scheme to defraud patients and providers in violation of the Racketeer Influenced and Corrupt Organizations Act, to the extent they were based on predicate acts of mail and wire fraud.

"Plaintiffs satisfactorily allege that Cigna and MultiPlan were co-participants in a RICO scheme that caused harm," Judge Davila said in the order.

In addition to upholding RICO claims, Judge Davila's order also upheld claims alleging Multiplan had breached its fiduciary duty to plan participants in violation of the Employee Retirement Income Security Act, holding that allegations supporting the patients' RICO claims also supported the ERISA claim. Judge Davila also upheld a claim for equitable relief under ERISA against MultiPlan, holding it was premature to decide otherwise. Cigna's motion to dismiss ERISA claims was partially denied in a separate

order in March 2021.

The proposed class of benefit plan participants in several employee health plans insured by Cigna, led by a woman identified only as RJ who says she was stuck with steep bills for her son's behavioral health treatment, first sued in April 2020. Their complaint alleged that Cigna colluded with cost-containment middleman MultiPlan and its company subsidiary called Viant in a RICO enterprise to cheat patients on payments for out-of-network mental health and substance use disorder treatments.

The proposed class alleged that Cigna was required under the terms of their benefit plans to reimburse their out-of-network claims for mental health and substance use disorder treatments at a rate that's known as the "usual, customary and reasonable" or UCR rate, which is a composite rate based on similar providers in the same geographic area. The company had also promised to do so on the phone when verifying benefits as well as under the terms of the plan language, the proposed class members said in their complaint.

But the participants alleged that MultiPlan actually calculated the amounts Cigna would eventually pay for such services at a much smaller fraction of that rate, leaving patients with lower reimbursements for out-of-network treatment and tens of thousands in out-of-pocket costs to make up the difference.

In upholding the RICO claims based on mail and wire fraud, Judge Davila zeroed in on evidence presented by the proposed class in the complaint in the form of three verification-of-benefits or VOB calls made by workers for an intensive outpatient program provider seeking to obtain coverage information from Cigna for three different individuals, where the insurer had committed to reimburse at higher rates than what was ultimately paid. Judge Davila said the VOB calls alone provided sufficient evidence of predicate acts of fraud under RICO.

Judge Davila said proposed class had also plausibly alleged that Cigna misled the patients and their providers into believing the care would be paid for at the usual-and-customary rate. The proposed class had also plausibly alleged "that Cigna misled Plaintiffs and their

providers by omitting any information about repricing," Judge Davila said.

Judge Davila also rejected Cigna's argument that the voice calls explaining benefits weren't specific enough about reimbursement rates for the proposed class to adequately plead allegations that they relied on the companies' misrepresentations.

"Cigna's argument would have weight if Plaintiffs were asserting a promissory estoppel or breach of contract claim, but this is not their allegation. Instead, they allege mail and wire fraud," Judge Davila said. "Reasonable reliance on a specific promise to pay is not an element of a RICO claim predicated on mail and wire fraud."

While Judge Davila held that the proposed class had plausibly alleged RICO violations based on predicate acts of mail and wire fraud and had met other components necessary to survive dismissal on the RICO claims, he trimmed the suit of the RICO claims to the extent that they were based on money laundering, which the plan participants had also alleged was part of the scheme. Judge Davila also upheld claims of RICO conspiracy only to the extent they were based on predicate acts of mail and wire fraud and not money laundering.

In dismissing the money laundering claims, Judge Davila said the complaint lacked sufficient allegations to establish money laundering between the two companies, including a lack of specific facts in the complaint that alleged the defendants intended their transactions to promote illegal activity or to conceal the nature of the proceeds.

Judge Davila gave the example that the proposed class had alleged underpayment of claims from which the companies profited, but no allegations that Cigna or MultiPlan disguised or concealed the source or destination of those funds.

"Moreover, because Plaintiffs have self-funded plans, it is not plausible for Cigna to engage in money laundering," Judge Davila said.

Judge Davila also granted Cigna's motion to dismiss claims from anonymous plan participant LW, who had brought claims on behalf of her spouse, based on a forum

selection clause in her benefit plan requiring any claims to be brought in Tennessee federal court.

"Plaintiffs have not shown that the prospect of LW having to travel to Tennessee to litigate her claims is so burdensome such that it will effectively deny her of her day in court," Judge Davila said.

"We're encouraged that the pleadings are settled and that we can pursue our claims against Cigna and MultiPlan for the years-long fraud perpetrated against our clients," said Matt Lavin, attorney for the proposed class.

Counsel for Cigna and MultiPlan didn't immediately return requests for comment on the ruling on Tuesday. Cigna and MultiPlan didn't immediately return requests for comment.

The proposed class is represented by Matthew M. Lavin, Aaron R. Modiano and Thomas Edward Kelly of [Arnall Golden Gregory LLP](#) and David M. Lilienstein and Katie Joy Spielman of [DL Law Group](#) and Wendy Aline Mitchell of [Napoli Shkolnik PLLC](#).

Cigna Health & Life Insurance Co. is represented by William P. Donovan Jr., Joshua B. Simon, Warren Haskel, Dmitriy Tishyevich, Chelsea Cosillos and Caroline Incledon of [McDermott Will & Emery LLP](#).

Multiplan is represented by David Dworsky of [Sheppard Mullin Richter & Hampton LLP](#) and Brittany Holt Alexander, Katherine C. Mannino and Taylor J Crousillac of [Phelps Dunbar LLP](#).

Multiplan subsidiary Viant is represented by Errol J. King Jr., Craig L Caesar and Carys Anne Arvidson of Phelps Dunbar LLP and Mohammad Keshavarzi of Sheppard Mullin Richter & Hampton LLP.

The case is RJ et al. v. Cigna Behavioral Health Inc. et al., case number [5:20-cv-02255](#), in the [U.S. District Court for the Northern District of California](#).