

Edelson, Susman, Berger To Lead MultiPlan Collusion MDL

By **Lauraann Wood**

Law360, Chicago (September 23, 2024, 6:19 PM EDT) -- An Illinois federal judge on Monday tapped a team of lawyers from Edelson PC, Susman Godfrey LLP and Berger Montague PC to take the lead for plaintiffs in multidistrict litigation accusing MultiPlan and a host of insurers of colluding through the use of the data firm's pricing tools to systematically underpay out-of-network providers.

U.S. District Judge Matthew Kennelly said he chose the trio of firms because their proposal "makes the most sense" over competing ones from a "consensus group" of Burns Charest LLP, Scott + Scott Attorneys at Law LLP and Lockridge Grindal Nauen PLLP, as well as a "lean mean leadership machine" proposal from Hartley LLP partner Jason Hartley, consisting of his firm along with Lynch Carpenter LLP as liaison counsel.

The judge also granted an application to appoint Stephen M. Medlock of Vinson & Elkins LLP, Matthew Lavin of Arnall Golden Gregory LLP, Hunter Shkolnik of Napoli Shkolnik and Jennifer Scullion of Seeger Weiss LLP as the executive committee for the direct-action plaintiffs, with Christopher Seeger of Seeger Weiss serving as the DAPs' coordinating counsel.

Judge Kennelly said his concern with the proposed "consensus group," as Scott + Scott partner Robin van der Meulen described it, was that their proposed structure called for essentially nine lawyers or law firms to take the helm. The concern with the Hartley proposal cuts in the other direction, with the judge saying he was "concerned there's not enough in the way of resources there."

Arguing for the Edelson slate, partner Natasha Fernández-Silber assured Judge Kennelly that manpower would not be an issue with their proposed leadership structure. The leadership committee will have hundreds of attorneys across three firms to call on for their unique expertise.

"We just don't think there's been any showing or justification as to why a steering committee is even necessary here," she said, apparently referencing the competing proposals.

Assessing fees would also be "a more simple endeavor" than what was outlined in competing proposals, Fernández-Silber said. Counsel anticipates simply submitting their time and expenses on a monthly basis and periodically monitoring those submissions to ensure no effort is being duplicated, she said.

Van der Meulen argued the Burns Charest slate was Judge Kennelly's best option for lead counsel because the team had already been working from the outset to litigate according to the proposed class' best interests, including by initially filing suit in a centralized location such as the Northern District of Illinois.

The team had also been working with various plaintiffs' counsel since before the MDL was centralized to ensure the litigation was proceeding appropriately.

Another "tangible benefit" of the Burns Charest slate is that the attorneys comprising the proposed leadership structure all "genuinely like each other," which is sometimes a rarity, van der Meulen said.

Hartley argued Judge Kennelly should have gone with his leadership proposal because his clients in the MDL fall under multiple types of plaintiffs seeking relief, and "no firm has done more" to investigate and fashion allegations in the case to withstand dismissal motions, including by

addressing concerns a California Superior Court judge aired when handling similar allegations.

Counsel for MultiPlan and the other defendants signaled during Monday's hearing that they took no position on Judge Kennelly's lead counsel appointment.

In an email Monday, Fernández-Silber told Law360 the Edelson leadership slate is "grateful that the court appointed our three firms to represent the class and we look forward to vigorously pursuing the claims in this important case."

Representatives for the other plaintiffs didn't immediately respond Monday to a request for comment.

The Judicial Panel on Multidistrict Litigation initially sent six MultiPlan antitrust cases to Chicago **in August** and has added to the MDL four times since, according to court records.

Minnesota-based provider Live Well Chiropractic PLLC launched one of the MDL's **first lawsuits** amid growing concerns that MultiPlan allows insurers including UnitedHealth, Aetna and Cigna to **effectively collude** when pricing provider payments. Other suits in the MDL have been filed by doctors and hospital systems.

Live Well says in its suit that MultiPlan claims its "repricing" tools help insurers determine a fair rate to reimburse providers. But in reality, MultiPlan's services do what they're designed to do: suppress and fix the prices insurers pay physicians, according to Live Well's suit.

MultiPlan says its pricing algorithm calculates reimbursement rates based on historical data for similar providers for the same healthcare services, with regional cost-of-living adjustments, the provider said. But behind the scenes, Live Well alleges, MultiPlan overrides the "fair" rate calculated by the algorithm and instead imposes a reimbursement rate selected by MultiPlan and the insurer ahead of time.

MultiPlan and the insurance companies all agreed on the method of pricing the out-of-network claims, to share their competitively sensitive data to help drive the algorithm, and to apply the "override" values, according to the provider's suit. The insurers also agreed to pay providers "what MultiPlan tells them to pay" and to not undercut other MultiPlan customers with competitive pricing, Live Well claims.

Plaintiffs in the MDL are led by Edelson PC, Susman Godfrey LLP and Berger Montague PC.

MultiPlan is represented Latham & Watkins LLP and Phelps Dunbar LLP.

Law firms representing other defendants in the MDL include Williams & Connolly LLP, Hogan Lovells US LLP, Davis Polk & Wardwell LLP, McDermott Will & Emery LLP, Sidley Austin LLP, Gibson Dunn & Crutcher LLP, Neal Gerber & Eisenberg and Crowell & Moring LLP.

The case is In re: MultiPlan Health Insurance Provider Litigation, case number 1:24-cv-06795, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Matthew Perlman. Editing by Philip Shea.