

MAZIE SLATER KATZ & FREEMAN, LLC

103 Eisenhower Parkway
Roseland, New Jersey 07068
P: 973-228-9898
F: 973-228-0303
Co-Counsel for Plaintiff

SAME DAY PROCEDURES, LLC,

Plaintiff,

v.

CIGNA CORP.; CIGNA HEALTH CORP.;
CONNECTICUT GEN. LIFE INS. CO., INC.,
a/k/a CGLIC; CIGNA HEALTH MGMT.,
INC.; CIGNA HEALTH & LIFE INS. CO.;
MULTIPLAN, INC.; VIANT, INC., a/k/a Viant
Health Payments Sols.; *et al.*,

Defendants.

SUPERIOR COURT OF NEW JERSEY,
LAW DIV., ESSEX COUNTY
Dkt No. ESX-L-0652-22

CBLP Action

ORDER

THIS MATTER having been opened to the Court by way of the Motion by Mazie Slater Katz & Freeman, LLC, attorneys for Plaintiff Same Day Procedures, LLC (“SDP”), for an Order compelling Cigna and Payor Defendants¹ to produce outstanding discovery and remedy various deficiencies, and to refer all discovery disputes in this action to a discovery master; and the Court having considered the papers and oral argument of counsel; and for good cause having been shown;

IT IS on this ____18____ day of __April_____, 2024__; hereby

¹ “**Cigna**” refers collectively to defendants Cigna Corp., Cigna Health, Conn. General Life. Ins. (“CGLIC”), Cigna Health Management, and Cigna Health & Life Ins. Co.

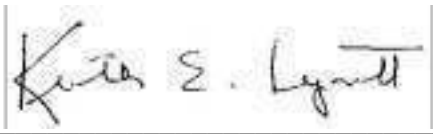
“**Payors**” refers collectively to defendants Edison Twp. Public Schools, MILA Managed Health Care Tr. Fund (a/k/a MILA National Plan), AAK USA, Sealy Mattress Co. of N.J., Unified Vailsburg Servs. Org., Infineum USA, and Soundview Paper Holdings, LLC (d/b/a Soundview Paper Mills).

“**MultiPlan**” refers collectively to defendants MultiPlan, Inc. and Viant, Inc.

ORDERED that Plaintiff SDP’s Motion be and is hereby **GRANTED** in part as set forth in the attached Statement of Reasons. Timing to be mutually agreed save as specifically noted. If parties cannot agree, the movant may request a Court Conference; and it is further

ORDERED that the current November 30, 2023 Discovery End Date (“DED”) be and is hereby extended to ___September 30_____, 2024, to accommodate the additional discovery, including document/electronic, deposition and expert discovery required to prepare this case for trial; and it is further

ORDERED that a copy of this Order shall be deemed served upon all counsel immediately upon its filing on e-Courts.

A handwritten signature in black ink, reading "Keith E. Lynott", is enclosed within a rectangular box. The signature is written in a cursive style.

Hon. Keith E. Lynott, J.S.C.

Opposed

Unopposed

Statement of Reasons

The Court considers the Plaintiff's motion to compel discovery from the Payor and Cigna Defendants based on the broad Rules of Court relating to discovery that establish the right of a party to inquire into any matter that is relevant to the claims and defenses asserted in the action and to obtain non-privileged discovery materials that are either admissible evidence in the case or reasonably calculated to result in the discovery of admissible evidence. The Court is mindful that, under our Rules of Court and Evidence, relevance is a relatively low threshold, encompassing materials that tend to prove or disprove a fact of significance to the determination of the case.

At the same time, the right to discovery is not unlimited. The Court is not authorized to enable discovery intended to create a basis for a claim or defense, only material that supports or refutes an existing claim or defense.

With these considerations in mind, the Court grants in part the Plaintiff's motion to compel based on the following findings:

- 1) The Plaintiff is entitled to production of the complete health care benefits plans of the Payor Defendants and/or the Cigna Defendants pertaining to the individuals listed in the DCL. There is no privilege that attaches to these plans. The fact that the Defendants have produced Summary Plan Descriptions that are themselves plan documents and that may, as the Defendants contend, comprehensively set forth the terms and conditions of the subject plans, including the terms that have relevance to the claims, counterclaims and/or defenses lodged in this case, are not grounds to withhold the complete plans themselves;
- 2) The Plaintiff is entitled to documents and/or Interrogatory responses referring or relating to, evidencing and/or detailing the following:

- (i) the inception of the relationship between or among the Payor Defendants, the Cigna Defendants and/or the Multiplan Defendants as to cost containment or repricing services (only) provided by Multiplan for patient or provider reimbursement claims, and the methods to be employed in such repricing, including financial projections, such as savings to be achieved.
- (ii) any inquiries undertaken by the Payor Defendants and/or the Cigna Defendants concerning the nature, extent, contents, adequacy or effectiveness of Multiplan's database or its repricing methods as a means of determining either UCR rates or some amount that would be less than or in substitution of UCR rates;
- (iii) any internal communications within the Payor Defendants' or Cigna Defendants' respective organizations, and/or between or among the Payor Defendants, the Cigna Defendants and/or the Multiplan Defendants, concerning the repricing methods or processes for payment, and the basis therefor, employed or to be employed by the Multiplan Defendants when engaged by the Payor Defendants and/or Cigna Defendants for repricing services, including financial reporting of the results of such efforts;
- (iv) the method(s) employed by the latter before engaging Multiplan for its repricing services or when Multiplan's repricing services were not utilized.

The Court finds that, considering the allegations of the Complaint, the Plaintiff has a right to discovery as to these matters, including discovery concerning such matters in

time periods before the first of the reimbursement claims at issue in this case was submitted and in addition to the disclosure of documents specifically relating to the individual claims identified in the Complaint via the DCL. Put differently, the nature and substance of the Cigna/ Multiplan relationship as to the cost containment or repricing of provider payment claims - and the Payor Defendants' knowledge of or participation in the same, if any - are relevant matters in this case and properly the subject of discovery.

The record contains a letter listing categories of discovery the Plaintiff seeks based, apparently, on the results of discovery in a similar case pending elsewhere. It argues that the production of such items in another case involving similar issues to this one establishes not only the existence of such items, but also the lack of any undue burden in producing them here. The Plaintiff asserts it is unable to obtain the items by other means, such as by contacting the plaintiff in the other case, due to confidentiality obligations extant in respect of such other case.

The Cigna and Payor Defendants argue that they are not required to respond to an informal discovery demand. They contend that (1) as this case relates to an Ambulatory Surgical Center ("ASC"), and the other case does not, the discovery sought in the latter is not necessarily relevant to this case; and (2) the Plaintiff has not otherwise sought these items in its formal demands served in this case.

The Court finds that many of the items listed in the letter are quite specific (e.g., references to "Bill Negotiation Services" or "Knowledge Center", "Non-Par Cost-Containment Sales Playbook" "Cost Containment De Selection", "PBAB Tracking of Requests") that would not appear to be within the ambit of existing formal demands of the Plaintiff in this case. This does not mean that the Plaintiff would not be entitled to

obtain such materials, but the Plaintiff does not appear to the Court to have yet tendered specific demands for the same at this time.

Other items appearing on this list are extraordinarily broad. For example, “[a]ll documents and correspondence regarding Viant pricing of ASC claims between January 1, 2017 and December 31, 2021” would encompass every individual claim repriced by Viant during this time period, whether or not involving the Plaintiff and/or patients on the DCL. The Court finds the Plaintiff has not yet sought, and is not at present entitled to, such materials.

That said, having examined the categories set forth in the letter in relation to the formal demands tendered in this case, the Court finds the following are relevant, discoverable and within the ambit of what the Plaintiff has already requested:

- (i) Cigna correspondence with Multiplan on the topic of ASC claim pricing, including correspondence with employees of Cigna on the one hand and employees of Multiplan on the other hand.
- (ii) The complete, unredacted Master Services Agreement(s) and Statement(s) of Work between Cigna and Multiplan as they existed or were amended or modified between January 1, 2017 and December 31, 2020;
- (iii) The unredacted Administrative Services Agreements between Cigna and each Payor Defendant in effect since January 1, 2017, including all addendums, exhibits and amendments;
- (iv) Invoices issued by the Cigna Defendants to the Payor Defendants between January 1 2017, and December 31 2021, relating to the services identified on the DCL;

- (v) Documents and correspondence regarding percentile changes to ASC claims priced by the Multiplan program for Cigna between January 1, 2017, and December 31, 2021;
- (vi) Documents and correspondence regarding discussions of the underlying data set used by the Multiplan Defendants to price ASC claims for the Cigna Defendants between January 1, 2017, and December 31, 2021;
- (vii) Documents and correspondence regarding descriptions by the Multiplan Defendants or Cigna Defendants of their pricing methodologies between January 1, 2017, and December 31, 2021;
- (viii) Documents and correspondence relating to any and all updates by the Multiplan Defendants to the Cigna Defendants referencing ASC pricing between January 1, 2017, and December 31, 2021;
- (ix) Correspondence regarding the Plaintiff and its physicians from January 1 2017 until present;
- (x) Documents and correspondence relating to negotiation and appeal parameters set by the Cigna Defendants for the Multiplan Defendants for responding to appeals and inquiries of Multiplan priced claims for the period January 1, 2017, through December 31, 2021; and
- (xi) Call logs relating to the specific services provided or to be provided to the patients identified in the DCL.

The Court finds the Plaintiff is entitled to production of non-privileged documents relating to these matters if not already produced. As noted, the foregoing is not intended to limit further demands for relevant materials by the Plaintiff or to further challenges by

the Cigna and/or Payor Defendants as to the relevance, etc. of any such subsequently sought materials.

- 3) The Plaintiff has a right to reasonable ESI discovery in a case of this nature, including as to the issues identified above. To that end, the Plaintiff has, to the Court's understanding, proposed an ESI protocol, including search terms. The Court will expect the parties to interact in good faith over the ensuing 20 days to attempt to agree on these matters. If they cannot or do not agree, the Plaintiff may submit the dispute to the Special Discovery Master, in the first instance, for resolution. See below as to the Special Discovery Master.
- 4) The Plaintiff has a right to production of non-privileged documents relating to the Affirmative Defenses interposed by the Cigna and/or Payor Defendants. This includes the following categories to the extent not already produced:
 - (i) Notices or communication of the Cigna Defendants to the Plaintiff disclosing policies regarding collecting deductibles, coinsurance, copayment or other cost sharing from patients, as well as disclosures to the Plaintiff regarding the Cigna Defendants' policies regarding "fee forgiveness", "fee waiver", and or patient discount policies;
 - (ii) Documents in the Cigna Defendants' possession custody or control that they assert impose or discuss a legal duty (whether contractual, common law or statutory), on the Plaintiff as a New Jersey out-of-network provider to collect deductibles, coinsurance, copayment, and other cost sharing from its patients; and
 - (iii) Documents of the Cigna Defendants' SIU referred to in its July 22, 2021 letter, or relating to the statement that certain plan documents give Cigna the right to deny

payments or claw back over \$6 million in reimbursement for all clients paid from January 1, 2017, to April 12, 2021.

- 5) The Plaintiff has a right, when document production is completed, including ESI discovery, to fully compliant R. 4: 18 Certifications of Completeness from each Defendant to which it has directed discovery demands. Each of such Defendants must provide the same.
- 6) The Court will appoint a Special Discovery Master for purposes of supervising discovery as it now proceeds. The record reflects the Defendants do not oppose such appointment. The Court concludes independently that the circumstances of this CBLP case warrant the appointment of a Special Discovery Master in light of the complexity of the issues and the likely need for frequent consideration of discovery-related applications from both sides as the case proceeds. The parties shall consult reasonably to attempt to agree on the individual to be selected. If they cannot agree within 20 days, each side may submit to the Court up to three names of proposed Special Discovery Masters to consider. The Court will then select the individual to serve in this capacity.
- 7) The Court will examine in camera the unredacted versions of documents produced by the Defendants in redacted form under claim of privilege to determine if the redactions are appropriate and if the invocation of a privilege or privileges is justified.