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Press Release

FOR IMMEDIATE RELEASE

6 A.M. EDT, November 11, 2008

\$40 Medical Charge Provokes Five year Court Battle

Like the children's story book fable about the little train that struggled until he was successful, this is a case called "The Little Man That Could."

Samuel J. Juniper lives in Point Pleasant, West Virginia. He is a elderly retiree of M&G Polymers, located in Apple Grove, West Virginia. He lives on a fixed income.

One day while at his doctor, laboratory work was ordered. When his **health insurance** denied coverage for venipuncture necessary for performing the ordered diagnostic lab tests, he filed a civil complaint against M&G Polymers and Aetna Insurance.

The Defendants, and their attorneys fought for five years and wasted tens of thousands of dollars fighting Mr. Juniper. Aetna Insurance unsuccessfully took the battle all the way to the US Court of Appeals for the Fourth Circuit (one step below the United States Supreme Court) and lost to Samuel Juniper "the little man that could" all over a \$40 complaint.

When denied coverage for venipuncture charges for having blood drawn as part of diagnostic lab tests under his health insurance coverage, Samuel J. Juniper filed a complaint in the magistrate court of Mason County, seeking damages in the amount of \$40 (the amount he was charged for the venipuncture). The original civil complaint, filed by Samuel J. Juniper in the magistrate court of Mason County, WV on May 27, 2003, alleged that M&G Polymers USA, LLC of Apple Grove, WV had not paid medical claims due [the plaintiff] which [were] covered by written agreement" as part of his employee benefit plan.

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On June 23, 2003, the Defendant, M&G Polymers filed a "Notice of Removal" to remove the civil action from Mason County Magistrate Court to Federal District Court. The basis of this request was that Mr. Juniper, an M&G retiree, was seeking to recover benefits from an employee-sponsored benefit plan and his claims were governed by the Employee Income Retirement Security Act of 1974, a federal act. . In essence, they decided to make a federal case out of it.

When Mr. Juniper was billed by Holzer Clinic for services rendered in December, 2002 and February, 2003, charges for "lab tests" and "venipuncture" were listed separately. 85% of the charges for diagnostic lab tests were paid when the charges were submitted to Aetna US Healthcare, the insurance company contracted by M&G to service medical claims. However, Aetna made no payments for the venipuncture charges, which totaled \$40. Mr. Juniper sought review of this denial of benefits from the insurance Plan Administrator at M&G, and it refused to pay the charges stating that they were: "not eligible for reimbursement under the P&I agreement."

The Plan Administrator, Kim A. Korber, reasoned that because Aetna had "unbundled" the charges for certain diagnostic testing and that because the venipuncture service "did not constitute a diagnostic laboratory test" it was not covered under the plan even though the service of drawing blood was necessary in order to perform the diagnostic lab tests.

The findings and recommendation filed by the US District Court state that "No rational basis is apparent for separating the procedure for drawing blood from the diagnostic test for which the blood was drawn." On the other hand, in the Explanation of Benefits (EOB) for these charges, Aetna stated that the claim was denied for other reasons, namely that the charge for the venipuncture was "in excess of customary charges" and that M&G's plan provided benefits only "at the prevailing charge level, as determined by Aetna." The plaintiff's complaint also claimed that venipuncture charges had been paid at the same clinic, as recently as July 2002, by United Health Care. But M&G's Plan Administrator explained that United Healthcare covered these charges because it considered Holzer Clinic an in-network provider whereas Aetna did not.

Magistrate Judge Taylor was of the opinion that the Plan Administrator's decision was not reasonable because it was not based upon the same grounds as Aetna's denial of the claims and also because similar charges had been covered in the past under M&G's P&I Agreement, and because there was no rational basis for covering blood tests but not the procedure necessary to procure the blood. Judge Taylor pointed to the conflicting reasons for the denial of these claims. (In later findings, the US District Court's judgment order explains that the discrepancy between the two reasons given for the denial lies in the fact that "in

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order for a claim to be denied as not customary and reasonable, the determination is based on the underlying finding that the claim was eligible.”)

M&G appealed the United States Magistrate Court’s decision to the US District Court the Southern District of WV, alleging that Magistrate Judge Taylor overlooked some correspondence from them, claiming that the “reasonable & customary charges” issue and the issues named in Aetna’s Explanation of Benefits were addressed in two separate letters and that the two were not in conflict but handled by the Plan Administrator as two entirely separate matters.

M&G appealed the magistrate court’s decision to the US District Court the Southern District of WV, alleging that Magistrate Judge Taylor overlooked some correspondence from them, claiming that the “reasonable & customary charges” issue and the issues named in Aetna’s Explanation of Benefits were addressed in two separate letters and that the two were not in conflict but handled by the Plan Administrator as two entirely separate matters.

At this point, Mr. Juniper was able to obtain counsel to assist in the recovery of his \$40.00 by hiring Mark F. Underwood of the Huntington, W.V. law firm of Underwood & Proctor.

Upon hearing this case, the US District Court for ruled in favor of Mr. Juniper, upholding Magistrate Judge Taylor’s findings and recommendation, and granting the motion for judgment against M&G Polymers. The court concluded that Aetna had denied the claims in question based on its own internal policy which considered venipuncture charges “incidental” to the lab services rather than on policies set forth in the P&I Agreement and that therefore, the Plan Administrator’s determination that the services were not covered under the P&I agreement was not reasonable. The US District Court further stated that the administrator had “abused its discretion” and “did not comply with the procedural rules of the Employee Retirement Income Security Act” in denying coverage.”

M&G Polymers subsequently filed an appeal of this decision with the United States Court of Appeals for the Fourth Circuit. After extensive briefing, the Fourth Circuit Court of Appeals, affirmed the judgment of the District Court. It held that there was “no reversible error” in the handling of the case at the US District Court and affirmed the ruling in favor of Mr. Juniper “for the reasons stated by the district court.”

Timeline:

- December 2002 & February, 2003 - Samuel J. Juniper has blood drawn at Holzer Medical Clinic as part of diagnostic laboratory testing.
- May 27, 2003 – Mr. Juniper files civil complaint against M&G Polymers to recover his \$40 for this medical expense in the Magistrate Court of Mason County, WV.

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- June 23, 2003 – M&G Polymers & Aetna Insurance Co. files a notice of removal to remove this case to the US District Court for the Southern District of WV.
- June 4, 2007 – US Magistrate Judge, Maurice Taylor, finds in favor of Mr. Juniper. Complaint.
- June 4, 2007 – M&G Polymers & Aetna filled an appeal to US District Court Judge Robert C. Chambers.
- June 2007 – Mr. Juniper hires Underwood & Proctor Law offices to represent him which files extensive briefing. Underwood & Proctor agree to represent Mr. Juniper without payment.
- July 12, 2007 – US District Court judge upholds US Magistrate judge's findings, again ruling in favor of plaintiff, Samuel J. Juniper.
- M&G Polymers and Aetna appeal US District Court Judge Chambers ruling against them.
- The parties incur tens of thousands of dollars in briefing costs for the appeal to the Fourth Circuit.
- Oct 10, 2008 – US Court of Appeals for the Fourth Circuit affirms the judgment of the district Court, in favor of plaintiff, Samuel J. Juniper
- Mr. Juniper is still waiting on his \$40.00!