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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C-11 HON. JOHN C. GASTELUM, JUDGE

GILLEN WASHINGTON, AN)
INDIVIDUAL,)
)
 PLAINTIFF,)
)
 VS.)
)
 AETNA INC., A CONNECTICUT)
 CORPORATION, AETNA LIFE)
 INSURANCE COMPANY, A)
 MASSACHUSETTS CORPORATION,)
 AND DOES 1 THROUGH 100,)
 INCLUSIVE,)
)
 DEFENDANTS.)
 _____)

CASE NO. 30-2015-
00811734-CU-BC-CJC

REPORTER'S TRANSCRIPT

WEDNESDAY, FEBRUARY 14, 2018

APPEARANCES OF COUNSEL:

FOR PLAINTIFF: LAW OFFICES OF SCOTT C. GLOVSKY
BY: SCOTT C. GLOVSKY, ESQ.
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FOR DEFENDANT: GIBSON, DUNN & CRUTCHER, LLP
BY: RICHARD J. DOREN, ESQ.
HEATHER L. RICHARDSON, ESQ.
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REPORTED BY: KAREN A. HUTCHISON, CSR NO. 6664

1 SANTA ANA, CALIFORNIA - WEDNESDAY, FEBRUARY 14, 2018

2 AFTERNOON SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN
4 OPEN COURT:)

5
6 THE COURT: WASHINGTON VERSUS AETNA. APPEARANCES.

7 MR. DOREN: GOOD AFTERNOON, YOUR HONOR. RICHARD
8 DOREN ON BEHALF OF AETNA.

9 MS. RICHARDSON: HEATHER RICHARDSON ON BEHALF OF
10 AETNA.

11 MR. DETTMER: AND ETHAN DETTMER ALSO ON BEHALF OF
12 AETNA.

13 MR. GLOVSKY: GOOD AFTERNOON, YOUR HONOR. SCOTT
14 GLOVSKY ON BEHALF OF THE PLAINTIFF.

15 MR. DYBNIS: GOOD AFTERNOON, YOUR HONOR. ARI
16 DYBNIS ALSO ON BEHALF OF THE PLAINTIFF.

17 THE COURT: ALL RIGHT. AS FAR AS THIS EX PARTE,
18 I'VE READ THE PAPERS, I DON'T NEED ANYTHING REPEATED BACK
19 TO ME.

20 MR. GLOVSKY, WHAT DO YOU HAVE TO SAY?

21 MR. GLOVSKY: YOUR HONOR, A COUPLE OF THINGS.
22 WE'VE BEEN CONTINUED SEVERAL TIMES.

23 THE COURT: I KNOW THAT. MOVE ON FROM THAT.

24 MR. GLOVSKY: THERE'S NO BASIS UNDER THE LAW FOR A
25 CONTINUANCE. I THINK WE SHOULD BRING A JURY IN AND DEAL
26 WITH IT, AND THEY CAN RENEW THEIR MOTION AT THE TIME,

1 BECAUSE I DON'T THINK ANY JURORS WOULD HAVE HEARD OF THIS.
2 I DON'T THINK THERE'S EVEN AN ISSUE. AND THE STORY THAT
3 WAS IN THE PAPER WAS PRIMARILY ABOUT THE INSURANCE
4 COMMISSIONER, NOT ABOUT THIS CASE.

5 THE LEGAL STANDARDS, PUBLICITY IS NOT A SUFFICIENT
6 LEGAL STANDARD TO CONTINUE THE TRIAL UNLESS THEY HAVE
7 EVIDENCE, AND THEY HAVE NONE, THAT SHOWS THAT WE CAN'T
8 FIND ANY JURORS THAT CAN BE IMPARTIAL.

9 NOW, OUR COURTS ARE OPEN TO THE PUBLIC, THE MEDIA
10 IS THE PUBLIC. AND FRANKLY I'M NOT EVEN SURE IF THERE'S
11 GOING TO BE ANY MEDIA COVERAGE OF THE TRIAL BUT THAT,
12 AGAIN, IF WE CAN FIND -- IF THEY HAVE NO EVIDENCE THAT ANY
13 JURORS CANNOT BE IMPARTIAL, THERE'S ABSOLUTELY NO BASIS
14 FOR THE MOTION.

15 WE'VE BEEN HERE MANY TIMES, WE'VE CALENDARED WITH
16 OUR EXPERTS AND OUR EXPERTS HAVE HAD TO BLOCK OFF
17 PATIENTS, RESERVE DATES AT LEAST FOUR OR FIVE TIMES.
18 WE'VE BEEN WORKING -- THERE'S JUST TWO OF US IN OUR FIRM,
19 AND WE'VE BEEN WORKING, PREPARING FOR TRIAL, THIS MOST
20 RECENT TIME, SINCE DECEMBER. AND WE'VE BEEN ESSENTIALLY
21 TRAILING SINCE -- WELL, WE WERE HERE JANUARY 22 AND
22 ESSENTIALLY SINCE THEN.

23 IT CREATES A BURDEN, WHILE THERE'S NO BURDEN ON
24 AETNA, IT CREATES A BURDEN ON US, QUITE FRANKLY. I'D LOVE
25 TO SEE MY FAMILY. AND WE'VE BEEN WORKING SO HARD ON THIS
26 CASE FOR SO LONG THAT, YOU KNOW, WE BELIEVE THAT IT'S TIME

1 TO GET TO TRIAL.

2 ALSO, THE STANDARDS FOR JUDICIAL ADMINISTRATION
3 HAVE GUIDELINES OF 18 TO 24 MONTHS FOR A CASE TO GET TO
4 TRIAL. WE'VE BEEN -- THE CASE WAS FILED ABOUT THREE YEARS
5 AND FIVE MONTHS AGO, SO WE'RE A YEAR AND FIVE MONTHS PAST
6 THOSE DEADLINES. SO THAT'S ESSENTIALLY OUR POSITION.

7 I WOULD URGE THE COURT TO LET'S GO ON WITH THE
8 CASE, BRING THE JURORS IN. WE CAN TALK TO THE JURORS,
9 FIND OUT IF THERE IS ANY PROBLEM, AND THEN AFTER JURY
10 SELECTION AND CERTAINLY COUNSEL HAVE A CHANCE TO INQUIRE,
11 DEAL WITH IT THEN.

12 THE COURT: ALL RIGHT. DEFENSE SIDE, THERE'S
13 THREE OF YOU THERE.

14 MR. DOREN: YOUR HONOR, I'LL GIVE IT A SHOT.
15 FIRST OF ALL, IN TERMS OF THE CNN ARTICLE ITSELF, THESE
16 ARE TWO OF THE SCREEN SHOTS OF PHOTOS, COURTESY OF
17 MR. GILLEN WASHINGTON: ONE OF HIS SURGICAL INCISION, AND
18 ONE OF HIM LYING IN A HOSPITAL BED COURTESY OF GILLEN
19 WASHINGTON.

20 ADDITIONALLY, YOU HAVE VIDEOTAPED TESTIMONY OF ONE
21 OF THE MEDICAL DIRECTORS INVOLVED IN ADJUDICATING
22 MR. GILLEN WASHINGTON'S CASE. THESE WERE PROVIDED
23 COURTESY OF MR. SCOTT GLOVSKY.

24 THE INTERVIEW OF MR. WASHINGTON WHICH WAS FILMED,
25 IF YOUR HONOR HAD A CHANCE TO WATCH IT, HE DECLARES HIS
26 ANGER AT AETNA, HE DECLARES HIS DESIRE TO MAKE A JURY

1 CHANGE AETNA. IT'S A CALL TO ARMS FOR ANYONE THAT'S SEEN
2 IT.

3 THE ARTICLE ALSO SUGGESTS, IN FACT ASKS THAT
4 ANYONE THAT'S HAD ANY ISSUE WITH THEIR INSURER AND HAS HAD
5 A CLAIM DENIED TO CALL THE DEPARTMENT OF INSURANCE.

6 MR. GLOVSKY IN HIS BRIEF STATED THE PLAINTIFF AND
7 HIS COUNSEL HAVE NO CONTROL OVER THE MEDIA OR CONTROL OVER
8 WHAT STORIES IT PUBLISHES AND WHEN, THOUGH WITHIN MINUTES
9 OF RECEIVING THE STORY HE RETWEETED IT, AND FROM HIS
10 RETWEET THERE WERE ANOTHER 4,000 RETWEETS.

11 ADDITIONALLY, YOUR HONOR, YOU MAY RECALL, AND I
12 KNOW YOU'VE READ THE PAPERS SO I'LL BE EXTREMELY BRIEF,
13 ONE WEEK BEFORE THE JUNE 15TH TRIAL DATE THERE WAS ANOTHER
14 ARTICLE ON CNN THAT GOT FAR LESS TRACTION THAN THIS
15 YEAR'S. THIS YEAR THEY TOOK IT UP A NOTCH. INSTEAD OF
16 JUST CHARACTERIZING TESTIMONY, THEY ACTUALLY PROVIDED
17 VIDEOTAPE, THEY PROVIDED TRANSCRIPTS, THEY BROUGHT A
18 CAMERA CREW ONTO WHAT I THINK WAS THE NORTHERN ARIZONA
19 UNIVERSITY CAMPUS TO FILM AND INTERVIEW MR. WASHINGTON
20 WHILE HE DECLARES HIS ANIMUS TOWARD AETNA, AND THIS TIME
21 THEY GOT THE TRACTION THAT THEY HOPED TO GET LAST TIME.

22 THE COURT CALLED US AND SAID, COME DOWN FRIDAY
23 AFTERNOON -- FRIDAY AFTERNOON THE COURT CALLED US AND
24 SAID, COME DOWN TODAY TO TRY THE CASE. AND, YOUR HONOR,
25 IF YOU WANT TO TALK PEOPLE WHO HAVE BEEN WORKING HARD
26 PREPARING THE CASE AND WOULD LIKE TO SEE THEIR FAMILIES,

1 WE'RE ALL IN THE SAME BOAT. BUT WE CANNOT TRADE FOR OUR
2 CLIENT A QUICK TRIAL FOR A FAIR ONE. THE COURT CALLED US
3 ON FRIDAY AFTERNOON, AND SUNDAY AFTERNOON CNN PUBLISHED
4 ITS ARTICLE.

5 NOW, WE HAVE SEEN -- AND FROM THERE, YOUR HONOR,
6 IT WAS PICKED UP BY MOST EVERY ONLINE AND OLD LINE MEDIA.
7 IT'S BEEN IN FORBES, IT'S BEEN IN FORTUNE MAGAZINE.
8 TODAY, YOUR HONOR, TODAY, FRONT PAGE OF THE LOS ANGELES
9 TIMES BUSINESS PAGE, STORY ABOUT AETNA. AND, YOUR HONOR,
10 BACK PAGE OF SECTION 1, L.A. TIMES, TODAY, "THE AETNA
11 SCANDAL'S BIG REVEAL," AN EDITORIAL BASED ON THE CNN
12 ARTICLE.

13 WE DON'T KNOW WHERE THIS IS GOING FROM HERE, YOUR
14 HONOR. FOR THE LAST SEVERAL DAYS, AETNA HAS HAD ITS HANDS
15 TIED BY ITS OBLIGATIONS UNDER THE FEDERAL AND STATE
16 PRIVACY LAWS TO BE UNABLE TO FULLY RESPOND TO PLAINTIFF'S
17 ALLEGATIONS AND THE SPIN AND THE SMEAR CAMPAIGN THAT'S
18 BEEN INCLUDED IN THESE ARTICLES. AND I WANT TO ADDRESS
19 THAT WITH THE COURT BEFORE WE'RE DONE HERE TODAY.

20 BUT THE POINT IS, YOUR HONOR, THIS IS AN EXTREMELY
21 DYNAMIC SITUATION. IT'S CHANGING BY THE HOUR AS THERE ARE
22 NEW ARTICLES AND NEW DISCLOSURES AND NEW DISCOVERIES. TO
23 THE EXTENT WE BRING JURORS IN HERE TOMORROW OR FRIDAY AND
24 ASK THEM WHETHER THEY'VE HEARD ABOUT THIS, IF THEY
25 HAVEN'T, THEY MAY BE HEARING ABOUT IT FROM SOMEBODY
26 SITTING NEXT TO THEM; AND IF THEY HAVEN'T, THEY MAY HEAR

1 ABOUT IT THE NEXT DAY BECAUSE THIS IS STILL UNFOLDING AND
2 IT'S STILL COMING OUT IN THE PAPERS EVERY DAY. IT'S IN
3 THE SAN DIEGO UNION TRIBUNE TODAY AS WELL.

4 SO VOIR DIRE IN AND OF ITSELF CANNOT CURE THE
5 PROBLEM. AND THE PLAINTIFF'S ARTICLE WAS DESIGNED,
6 INTENDED AND AIMED AT A CALL TO ARMS FOR POTENTIAL JURORS,
7 TO COOPT POTENTIAL JURORS INTO THEIR VIEW OF THE CASE.
8 AND NOW THE EXPLANATION IS THAT, WELL, AETNA CAN FIND
9 THOSE PEOPLE AND ROOT THEM OUT THROUGH VOIR DIRE, AND IT'S
10 REALLY AETNA'S BURDEN TO PROVE THAT WHAT WE HAVE DONE HAS
11 CAUSED PREJUDICE.

12 WELL, I CAN TELL YOU, YOUR HONOR, THERE ARE NOW
13 SIX DIFFERENT STATE REGULATORS LOOKING INTO AETNA BECAUSE
14 OF THE CNN ARTICLE. A CLASS ACTION LAWSUIT WAS FILED IN
15 FEDERAL COURT BASED ON THE CNN ARTICLE. THERE'S EVERY
16 INDICATION THAT THE GENERAL POPULATION IS HAVING A VERY
17 STRONG REACTION TO WHAT THESE GENTLEMEN HELPED CNN PLACE
18 INTO THE PUBLIC ETHER AND THAT HAS SINCE DISSEMINATED FROM
19 THERE.

20 NOW, WE WANT TO GET TO TRIAL, BUT WE WANT TO HAVE
21 A FAIR TRIAL. AND WE THINK, YOUR HONOR, IN SIX MONTHS
22 THAT WILL GIVE TIME, FIRST OF ALL, FOR ALL OF THIS TO PLAY
23 OUT, FOR US TO SEE WHERE IT LANDS. BECAUSE ANOTHER
24 ELEMENT OF IT IS WHAT DO WE WANT TO DO WITH HOW THIS WORKS
25 OUT? DO WE WANT TO ASK THE COURT FOR A CURATIVE
26 INSTRUCTION? WHICH WOULDN'T WORK NOW, NOT AT THIS TIME,

1 NOT AT THIS TIME WHEN WE HAVE NO IDEA HOW IT'S GOING TO
2 WORK OUT, BUT SIX MONTHS DOWN THE ROAD WE CAN SEE WHAT'S
3 GOING ON, WE CAN BASE OUR CASE STRATEGY ACCORDINGLY, AND
4 HOPEFULLY THIS WILL ALL BE RESOLVED. AND HOPEFULLY IF THE
5 TRUTH COMES OUT, AETNA'S NAME WILL BE VINDICATED, AND WE
6 CAN COME TO THIS COURTROOM AND HAVE A FAIR TRIAL.

7 BUT WHAT WE HAVE RIGHT NOW IS AN OVERHEATED PUBLIC
8 ARENA. THE PROOF OF POTENTIAL PREJUDICE IS THAT YOU
9 CANNOT GO ON FACEBOOK, YOU CANNOT GO ON YAHOO, YOU CANNOT
10 OPEN THE L.A. TIMES OR THE SAN DIEGO UNION TRIBUNE OR
11 FORBES OR FORTUNE AND NOT READ ABOUT THIS.

12 AND SO, YOUR HONOR, I'LL STOP NOW, BUT I WOULD
13 LIKE TO CLOSE WITH THIS: CALIFORNIA RULE OF PROFESSIONAL
14 CODE 5120 STATES THAT A MEMBER WHO IS PARTICIPATING OR HAS
15 PARTICIPATED IN LITIGATION OF A MATTER SHALL NOT MAKE AN
16 EXTRAJUDICIAL STATEMENT THAT A REASONABLE PERSON WOULD
17 EXPECT TO BE DISSEMINATED BY MEANS OF A PUBLIC
18 COMMUNICATION IF THE MEMBER KNOWS OR REASONABLY SHOULD
19 KNOW THAT IT WILL HAVE A SUBSTANTIAL LIKELIHOOD OF
20 MATERIALLY PREJUDICING AN ADJUDICATIVE PROCEEDING IN THE
21 MATTER.

22 NOW, I DON'T KNOW IF THERE'S BEEN A STEP OVER THE
23 LINE, A STEP TO THE LINE, OR A STEP NEAR THE LINE. BUT
24 THE SPIRIT OF THIS RULE OF PROFESSIONAL CONDUCT IS
25 CERTAINLY NOT THAT IT SHOULD BE UPON AETNA TO PROVE
26 PREJUDICE, WHEN WHAT WE'VE BEEN ABLE TO PROVE IS THAT

1 THERE'S BEEN A BROAD, SLANTED, PREJUDICIAL SMEAR JOB DONE
2 ON AETNA WITHIN 72 HOURS OF JURY SELECTION THAT CONTINUES
3 TO PLAY OUT IN THE NATION'S PRESS, IN THE NATION'S
4 STATEHOUSES, AND ONLINE THROUGHOUT THE COUNTRY.

5 THE COURT: ALL RIGHT. MR. GLOVSKY, I'LL GIVE YOU
6 A BRIEF CHANCE TO RESPOND.

7 MR. GLOVSKY: YES, YOUR HONOR. FIRST OF ALL,
8 WE'RE NOT CNN. THE GRAVAMEN OF THAT ARTICLE AND THE
9 OTHERS IS BECAUSE THE STATE INSURANCE COMMISSIONER
10 LAUNCHED AN INVESTIGATION. WE'VE NEVER SPOKEN TO THE
11 STATE INSURANCE COMMISSIONER. WE DON'T HAVE ANYTHING TO
12 DO WITH THAT. AND THE REASON IT'S BEEN IN THE MEDIA IS
13 BECAUSE OF THE REGULATORY ISSUES BY THE STATE REGULATORS.
14 WE'RE NOT CNN. WE DON'T CONTROL WHAT THEY DO, WE DON'T
15 CONTROL WHAT ANY OF THE MEDIA DOES.

16 WHAT'S RELEVANT IS THE LEGAL STANDARDS, THE LEGAL
17 STANDARDS. THEY HAVE PRESENTED NO EVIDENCE. AND WHEN WE
18 GET FOLKS FROM OUR COMMUNITY IN THIS BOX, WE CAN DEAL WITH
19 THIS DIRECTLY AND OPENLY AND HONESTLY, BECAUSE I THINK
20 THERE'S ABSOLUTELY NO ISSUE. THEY CAN MAKE TO-DOS AND
21 ACCUSE ME OF BEING UNETHICAL, WHICH I'M NOT EVEN GOING TO
22 ADDRESS RIGHT NOW BECAUSE I DON'T THINK THAT'S AN ISSUE
23 BEFORE THE COURT OTHER THAN TO SAY THAT I'M OFFENDED BY
24 IT, BUT I'LL LEAVE IT AT THAT.

25 YOUR HONOR, I'D URGE THE COURT TO LOOK AT THE
26 LEGAL STANDARDS, THAT THERE'S NO -- WE DON'T SET TRIALS

1 AROUND WHAT'S IN A NEWSPAPER. WE SET TRIALS AROUND OUR
2 STANDARDS AND OUR LAWS AND THE ISSUES RELATING TO TRIALS.

3 WE'VE BEEN CONTINUED SO MANY TIMES, AND I KNOW IT
4 HAS NOTHING TO DO WITH THE COURT'S FAULT, BUT IT'S TIME TO
5 GET TO JUSTICE, IT'S TIME TO -- AND WHAT WE'RE DOING HERE
6 HAS NOTHING TO DO WITH WHAT'S GOING TO BE IN THE MEDIA.
7 YOUR HONOR IS GOING TO MAKE RULINGS ON EVIDENCE AND LET
8 THINGS IN AND NOT LET OTHER THINGS IN.

9 AND WE ARE HERE TO TRY THE CASE. WE ARE HERE TO
10 GET TO JUSTICE. AND JUSTICE DELAYED IS JUSTICE DENIED,
11 AND ESPECIALLY HERE WHERE THERE'S BEEN CONTINUANCES IN THE
12 PAST.

13 AND THERE'S JUST NO BASIS UNDER THE LAW, UNDER THE
14 LEGAL STANDARDS, TO CONTINUE THE TRIAL. THERE'S NO
15 EVIDENCE THAT ANYTHING WOULD BE DIFFERENT SIX MONTHS FROM
16 NOW THAN IT IS RIGHT NOW. BUT THE ANSWER IS SIMPLY TO GET
17 PEOPLE IN THE BOX AND TALK TO THEM ABOUT IT BECAUSE I
18 REALLY BELIEVE IT'S A NONISSUE.

19 MR. DOREN: BRIEF COMMENT, YOUR HONOR.

20 THE COURT: GO AHEAD, MR. DOREN.

21 MR. DOREN: THE POWER OF THE ARTICLE IS EXHIBITED
22 IN THE FACT THAT THE INSURANCE COMMISSIONER'S
23 INVESTIGATION BEGAN AFTER IT WAS PUBLISHED. WHILE HE WAS
24 VIDEOTAPED ON IT EXPRESSING CONCERN AT WHAT CNN
25 COMMUNICATED THAT MR. GLOVSKY HAD COMMUNICATED TO THEM,
26 THE INSURANCE COMMISSIONER AND THE DEPARTMENT OF MANAGED

1 CARE BEGAN INVESTIGATIONS AFTER THAT ARTICLE WAS
2 PUBLISHED.

3 THE COURT: ALL RIGHT. I DON'T THINK I'VE EVER
4 SEEN ANYTHING QUITE EVEN CLOSE TO THIS, BUT I AM GOING TO
5 GRANT THE MOTION TO CONTINUE THIS TRIAL. I THINK THERE IS
6 GOOD CAUSE, THERE IS A SIGNIFICANT ANTICIPATED CHANGE IN
7 CIRCUMSTANCES OF THIS CASE, AND THAT IS THIS CNN ARTICLE.

8 AND I'M NOT GOING TO CAST ASPERSIONS ABOUT
9 MOTIVATION OR MANIPULATION, BUT THE WHOLE THING LOOKS VERY
10 FISHY TO ME. THE TIMING OF IT, IN PARTICULAR, IS HIGHLY
11 SUSPECT. THE FACT THAT THIS COURT CONTACTED EVERYONE LAST
12 FRIDAY TO LET YOU KNOW WE WERE GOING FORWARD THIS WEEK,
13 YOU FOLKS ARE THE ONLY ONES WHO KNEW THAT. I DIDN'T CALL
14 CNN AND TELL THEM THAT, AND I DOUBT ANYBODY ON THE DEFENSE
15 SIDE DID, WHICH LEADS ME TO BELIEVE WHERE DID THEY GET
16 THAT INFORMATION? I CERTAINLY DIDN'T PUT OUT A BULLETIN
17 TO ANYBODY SAYING, BY THE WAY, THE WASHINGTON VERSUS AETNA
18 CASE IS GOING NEXT WEEK. SO THAT HAD TO COME FROM
19 SOMEWHERE ON THE PLAINTIFF'S SIDE.

20 MR. GLOVSKY: I'M NOT SUGGESTING IT DIDN'T, YOUR
21 HONOR. THE MEDIA FOLLOWS TRIALS. AND THEY TALKED TO ME
22 ABOUT WHEN THE TRIAL IS GOING TO GO. I'M NOT ARGUING
23 AGAINST YOUR RULING, I UNDERSTAND YOUR RULING. I'M
24 JUST --

25 THE COURT: THE WHOLE THING SOUNDS VERY STRANGE TO
26 ME THAT ALL OF A SUDDEN JUST BEFORE WE START THE TRIAL

1 HERE COMES THIS MEDIA BLITZKRIEG. IT STARTED WITH ONE
2 THING, AND IT'S JUST ROLLED OVER AND ROLLED OVER. I DID A
3 QUICK GOOGLE SEARCH, AND THERE ARE TONS OF PEOPLE WHO HAVE
4 PICKED THIS UP. AND I'M NOT A COMPUTER SPECIALIST, I
5 DIDN'T SPEND A LOT OF TIME ON IT, BUT THIS THING HAS GONE
6 VIRAL. AND TO SUGGEST THAT SOMEHOW THERE'S NO EVIDENCE
7 THIS IS GOING TO MAKE ANY DIFFERENCE, TO ME, IS JUST
8 LUDICROUS.

9 THIS THING IS LIKE VIRAL WILDFIRE. AND TO WASTE
10 TIME HERE TRYING TO PICK A JURY ON AN EXTENSIVE CASE
11 THAT'S GOING TO TAKE QUITE A BIT OF TIME WITH THIS MUCH
12 RECENT MEDIA EXPOSURE, I DON'T KNOW HOW ANY REASONABLE
13 PERSON COULD SAY, NO, JUST BRING THE JURORS IN. TO ME
14 THAT'S JUST RIDICULOUS.

15 AND I'M LOOKING AT THE -- THIS ISN'T A CASE WHERE
16 WE'RE TALKING ABOUT STORIES THAT CAME OUT MONTHS AGO AND
17 WHAT THE IMPACT WAS. WE'RE TALKING ABOUT AN ARTICLE THAT
18 COMES OUT DAYS AHEAD OF WHEN WE'RE GOING TO PICK A JURY.

19 AND THE WHOLE THING IS STILL MUSHROOMING. IT'S
20 NOT LIKE IT DIED AND WENT AWAY; IT'S GROWING. MR. DOREN
21 IS TELLING ME THAT THERE ARE AT LEAST THREE MAJOR
22 NEWSPAPER ARTICLES ABOUT THIS TODAY. I HAVE NO REASON, I
23 HEARD NO OPPOSITION TO TELL ME THAT WASN'T TRUE, AND IT
24 SEEMS TO ME THAT IT'S GROWING, NOT DIMINISHING.

25 SO I THINK THERE IS DARN GOOD CAUSE TO CONTINUE
26 THIS TRIAL AT LEAST THAT FAR TO TRY TO ATTENUATE THIS.

1 THERE IS A LIKELIHOOD, A REASONABLE LIKELIHOOD OF
2 PREJUDICE HERE. THE STORY IS SPREADING AND IT'S RIGHT
3 BEFORE WE'RE ABOUT TO PICK THIS JURY. SO NO, WE ARE NOT
4 GOING FORWARD ON THIS. I DON'T EVEN THINK IT'S A CLOSE
5 CALL. I DON'T EVEN KNOW WHAT THIS IS ABOUT.

6 BRINGING IN JURORS AND JUST TRYING OUR LUCK WITH
7 IT, TO ME, THAT'S JUST NOT EVEN A COGENT ARGUMENT. I'M
8 NOT SURE IT'S DESERVING ANY MORE RESPONSE. I MEAN, YOU
9 WANT TO TALK ABOUT PREJUDICE? I SEE PHOTOGRAPHS IN THESE
10 ARTICLES THAT LOOK TO ME LIKE THEY'RE THE SUBJECT OF A
11 MOTION IN LIMINE THAT'S PENDING BEFORE ME, AND BOOM, HERE
12 THEY ARE IN THE MEDIA EVERYWHERE. RIDICULOUS.

13 SOMEBODY SHOULD HAVE EXERCISED SOME SORT OF
14 REASONABLE CONTROL HERE. SOMEBODY SHOULD HAVE SAID, GOSH,
15 THAT'S AN ISSUE PENDING BEFORE THE JUDGE. MAYBE THIS
16 ISN'T SUCH A GOOD IDEA TO PUT THIS IN FRONT OF THE MEDIA
17 FRENZY. IT DIDN'T HAPPEN.

18 AND THIS IS CLEARLY A TOTALLY ONE-SIDED STORY.
19 THERE'S NO BASIS HERE WHATSOEVER TO EVEN BEGIN TO ARGUE
20 THAT THERE ARE BOTH SIDES PRESENTED. I MEAN IT EVEN TALKS
21 ABOUT THINGS THE JURORS IN THIS CASE SHOULD CONSIDER. I
22 MEAN THAT IS JUST WAY OVER THE LINE. SOMETHING LIKE THIS
23 SHOULD NOT BE HAPPENING.

24 AND SO I THINK AT LEAST SIX MONTHS TO TRY TO
25 ATTENUATE THIS IS THE LEAST I CAN DO. AND I WOULD SAY
26 THAT IF SOMETHING LIKE THIS HAPPENS AGAIN, THERE COULD BE

1 GROUND FOR A CONTEMPT HEARING, OR PERHAPS I'LL JUST HAVE
2 THE STATE BAR INVESTIGATE WHAT'S GOING ON BECAUSE THIS
3 SHOULD NOT BE HAPPENING. I SHOULDN'T HAVE THIS KIND OF
4 MEDIA COVERAGE, ESPECIALLY THIS SLANTED, INCLUDING
5 EVIDENCE THAT MAY OR MAY NOT BE EXCLUDED AT TRIAL,
6 PROMULGATED IN THE MEDIA THAT'S ONLY GROWING, NOT
7 DIMINISHING. BECAUSE LIKE I SAID BEFORE, THIS IS
8 RIDICULOUS.

9 SO TO ARGUE THAT WE'RE GOING TO PROCEED TODAY AND
10 JUST TRY OUR LUCK AND SEE WHAT WE CAN DO, THE BEST WE CAN
11 TO TRY TO SORT IT OUT WITH THE JURORS ON THE STAND, YOU
12 START ASKING ABOUT IT, EVERYBODY IS GOING TO KNOW ABOUT
13 IT. THAT'S THE WAY IT'S GOING TO WORK. SO I DON'T THINK
14 THAT SOLUTION IS ANY SOLUTION AT ALL. THAT'S MAYBE JUST
15 WISHFUL THING.

16 AND MR. GLOVSKY, MR. DYBNIS, I HAVE THE FEELING
17 PRETTY STRONGLY IN MY MIND THAT IF THE DEFENSE HAD DONE
18 SOMETHING LIKE THIS, YOU WOULDN'T BE SITTING HERE TODAY
19 TELLING ME, OH, GOSH, YEAH, LET'S JUST BRING IN THE JURORS
20 AND HAVE AT IT, NO PROBLEM. YOU WOULD PROBABLY BE
21 SCREAMING BLOODY MURDER. AND IF YOU'RE GOING TO TRY TO
22 SUGGEST OTHERWISE, I THINK YOU'RE JUST INSULTING MY
23 INTELLIGENCE. I WOULDN'T EVEN TRY. SO THAT IS MY RULING.

24 IS THERE A DATE IN AUGUST OR SEPTEMBER THAT WORKS
25 FOR YOU FOLKS, OR DO I JUST PICK ONE?

26 MR. DOREN: YOUR HONOR, A DATE AFTER LABOR DAY

1 WOULD BE FINE. WE WILL MAKE IT WORK.

2 MR. GLOVSKY: I'M TURNING ON MY PHONE, YOUR HONOR.
3 YOUR HONOR, IF WE COULD, SOMETIME IN THE BEGINNING OF
4 AUGUST FOR GILLEN, WHO IS A STUDENT, IF WE COULD DO IT
5 BEFORE SCHOOL STARTS, MAYBE IN THE BEGINNING OF AUGUST.

6 THE COURT: WAS THIS ABOUT 10 DAYS? I FORGET.

7 MR. DOREN: THE ESTIMATE WAS 10 TO 15, YOUR HONOR.
8 AS I WORK THE MATH OUT, WE WERE VERY CLOSE. I WOULD SAY
9 WE'D BE IN THE FOURTH WEEK WITH THE RISK OF GOING INTO A
10 FIFTH.

11 THE COURT: I DON'T KNOW IF THERE'S A WAY TO MAKE
12 AUGUST WORK IF THAT'S HOW LONG IT IS. ALL RIGHT. I'M
13 GOING TO PICK A DATE. I'M GOING TO PICK AUGUST 20TH. SO
14 AUGUST 20TH, 2018, TRIAL, THIS DEPARTMENT, AT 9:00 A.M.

15 NOW, YOU PEOPLE TALK ABOUT FRUSTRATION. I
16 COULDN'T BE MORE FRUSTRATED AFTER ALL THE TIME I'VE SPENT
17 READING MOTIONS IN LIMINE, TRYING TO GET THAT DONE,
18 THINKING I AM GOING TO START TRIAL THIS WEEK, AND HAVING
19 THIS POP UP ON ME LIKE SOME SORT OF UNEXPLODED GRENADE
20 FROM BEYOND. THERE WAS NO NEED FOR THIS.

21 AND MR. DOREN REFERENCED THE RULE OF PROFESSIONAL
22 CONDUCT WHICH I THINK IS DANGEROUSLY CLOSE TO BEING
23 VIOLATED HERE. I'M GOING TO REITERATE, I DON'T EXPECT
24 ANYTHING LIKE THIS IS GOING TO HAPPEN AGAIN. IF THERE IS,
25 I AM GOING TO HAVE IT INVESTIGATED.

26 I REALIZE, MR. GLOVSKY, YOU DON'T CONTROL THE

1 MEDIA, BUT YOU DON'T HAVE TO GIVE THEM PHOTOGRAPHS THAT
2 ARE SUBJECT OF A MOTION IN LIMINE AS WELL. SO IF I WERE
3 YOU, I'D PUT ON MY THINKING CAP AND BE VERY CIRCUMSPECT
4 WHEN AUGUST ROLLS AROUND. AND IF THE MEDIA CONTACTS YOU,
5 I WOULD EXPECT YOU WOULD BE VERY REASONABLE ABOUT AVOIDING
6 A MEDIA BLITZ LIKE THIS SO THAT WE DON'T HAVE THIS ISSUE
7 AGAIN. OTHERWISE, I WILL BE VERY DISTURBED WITH YOU.

8 MR. GLOVSKY: I UNDERSTAND.

9 THE COURT: I DON'T KNOW HOW MUCH MORE STRONGLY I
10 CAN PUT IT. I DON'T WANT TO THREATEN YOU, BUT I CAN TELL
11 YOU THAT IF SOMETHING LIKE THIS HAPPENS AGAIN, THERE WILL
12 BE CONSEQUENCES. AM I GETTING MYSELF THROUGH TO YOU?

13 MR. GLOVSKY: YOU ARE, YOUR HONOR, I HEAR YOU.

14 MR. DOREN: YOUR HONOR, MAY I RAISE ONE OTHER
15 POINT? AS I MENTIONED, ONE OF THE ISSUES AETNA HAS HAD TO
16 STRUGGLE WITH IS THAT IT IS OBLIGATED, OBVIOUSLY, TO
17 RESPECT THE SCOPE AND APPLICATION OF FEDERAL AND STATE
18 PRIVACY LAWS. AND AS A RESULT, WE HAVEN'T BEEN ABLE TO
19 RESPOND IN ANY MEANINGFUL WAY BEYOND WHAT PLAINTIFF HAS
20 ALREADY SAID AND THAT IN SIGNIFICANT PART LED TO THE
21 SKEWED PRESENTATION.

22 THEY HAVE COME FORWARD OBVIOUSLY WITH HIPAA
23 PROTECTED INFORMATION THROUGHOUT THIS CASE. THE COURT HAS
24 AGREED THAT IT SHOULDN'T BE SEALED. BUT OUT OF AN
25 ABUNDANCE OF CAUTION, BEFORE AETNA, FIRST OF ALL, MEETS
26 WITH THE REGULATORS IT HAS TO MEET WITH AS A RESULT OF

1 THIS ARTICLE; AND SECOND OF ALL, HAS TO DEAL WITH ANY
2 OTHER CONSEQUENCES OF THIS, IF THERE'S AN AUTHORIZATION
3 FROM MR. WASHINGTON THAT WE CAN DISCUSS THE INFORMATION
4 THAT HE HAS BEEN DISCUSSING WITH CNN AND THAT HE HAS BEEN
5 PUTTING BEFORE THE COURT IN EVIDENCE, THAT WE CAN DISCUSS
6 IT WITH REGULATORS AND WE CAN DISCUSS IT AS NECESSARY TO
7 DEFEND OURSELVES, THIS WOULD BOTH BRING US WITHIN THE
8 SCOPE OF HIPAA AND PERMIT US TO WORK ON A LEVEL PLAYING
9 FIELD.

10 MR. GLOVSKY: YOUR HONOR, TWO THINGS: FIRST, THE
11 REGULATORS, WHAT THEY'RE TALKING ABOUT HAS NOTHING TO DO
12 WITH OUR CLIENT'S MEDICAL RECORDS. I'LL TALK TO MY CLIENT
13 ABOUT THAT. I CERTAINLY IMAGINE THAT ANYTHING THAT HE HAS
14 SAID PUBLICLY, I DON'T KNOW WHY THEY'D HAVE AN ISSUE WITH
15 THAT, BUT --

16 THE COURT: TO ME IF HE'S DISCUSSED IT PUBLICLY,
17 HE'S WAIVING ANY PRIVACY RIGHTS.

18 MR. GLOVSKY: I UNDERSTAND. AND TO THE EXTENT
19 THEY'RE ASKING US TO WAIVE SOMETHING ADDITIONAL, I'LL TALK
20 TO OUR CLIENT ABOUT IT. HE'S NOT HERE.

21 THE COURT: I DON'T KNOW ANYTHING ADDITIONAL. I
22 DON'T THINK MR. DOREN WAS ASKING ABOUT THAT.

23 MR. DOREN: IF WE COULD START WITH A STATEMENT ON
24 THE RECORD BY COUNSEL THAT HE AGREES WITH YOUR HONOR'S
25 STATEMENT THAT ANYTHING HE HAS STATED PUBLICLY HAS BEEN
26 WAIVED. AND THEN SECONDLY, YOUR HONOR, THE CONCERN IS, OF

1 COURSE, THE FACTS THAT THEY HAVE DISCLOSED ARE CAREFULLY
2 SELECTED TO CREATE A SKEWED PERCEPTION OF REALITY. SO
3 THERE ARE RELATED FACTS SUCH AS HIS TREATMENTS, THE
4 PAYMENT OF HIS BILLS, VARIOUS THINGS THAT SHOW AETNA'S
5 GOOD FAITH AND ITS REASONABLE CONDUCT AND THE REASON THAT
6 IT WAS DOING THE THINGS IT DOES THAT IT HAS BEEN UNABLE TO
7 DISCUSS.

8 MR. GLOVSKY: AND, YOUR HONOR, JUST TO RESPOND.
9 WHEN YOU'RE READY, YOUR HONOR, WHEN IT'S APPROPRIATE. I
10 APOLOGIZE.

11 THE COURT: ALL RIGHT. IT SOUNDS TO ME LIKE
12 THERE'S NO DISAGREEMENT THAT ANYTHING MR. WASHINGTON HAS
13 DISCUSSED PUBLICLY IN THE MEDIA, HE'S WAIVED ANY PRIVACY
14 INTERESTS.

15 MR. GLOVSKY: YOUR HONOR, THAT MAY BE THE CASE.
16 BUT NOT HAVING HIM HERE, I DON'T WANT TO WAIVE ANYTHING
17 WITHOUT MY CLIENT'S SPECIFIC AUTHORIZATION AND CONSENT. I
18 MEAN AS A GENERAL PRINCIPLE, AS A LEGAL MATTER, IF SOMEONE
19 TALKS ABOUT SOMETHING IN THE PUBLIC, AS FAR AS WHAT
20 THEY'VE DISCUSSED, OBVIOUSLY THEY'VE DISCUSSED THAT IN THE
21 PUBLIC. BUT I'M NOT GOING TO PUT ANYTHING ON THE RECORD
22 TO WAIVE ANY OF MY CLIENT'S RIGHTS WHEN MY CLIENT IS NOT
23 HERE BECAUSE I'M NOT ABOUT TO COMMIT ANY MALPRACTICE.

24 THE COURT: WHETHER HE AGREES OR NOT, IT SEEMS TO
25 ME HE HAS WAIVED THAT TO THE EXTENT HE'S DISCUSSED IT IN
26 PUBLIC, WHETHER HE AGREES THAT IT'S A WAIVER OR NOT, IF

1 HE'S TALKED ABOUT IT.

2 MR. GLOVSKY: I JUST WANT TO MAKE IT VERY CLEAR
3 FOR THE RECORD THAT I'M NOT CHARACTERIZING ANYTHING THE
4 COURT SAID AS BEING CORRECT OR INCORRECT. I JUST WANT TO
5 MAKE IT VERY CLEAR THAT I DON'T WANT TO WAIVE ANYTHING FOR
6 MY CLIENT WHILE MY CLIENT IS NOT HERE.

7 I'M NOT SUGGESTING THE COURT'S LEGAL
8 INTERPRETATION IS IN ANY WAY INCORRECT. I JUST WANT TO BE
9 VERY CLEAR THAT I'M NOT WAIVING ANYTHING FOR MY CLIENT
10 WHILE HE'S NOT HERE.

11 THE COURT: ALL RIGHT. THEN IF THERE'S FURTHER
12 INFORMATION YOU WANT TO AGREE ON OR DISAGREE ON, I'LL
13 LEAVE THAT UP TO YOU FOLKS.

14 MR. DOREN: ALL RIGHT, YOUR HONOR. AND IF NEED
15 BE, WE'LL COME BACK AND DISCUSS IT WITH YOU. AND WE
16 APPRECIATE IT, WE APPRECIATE ALL YOUR HELP.

17 THE COURT: ONE MORE THING BEFORE YOU GO, BECAUSE
18 I HAVE INVESTED A LOT OF TIME IN THIS, ON AUGUST 13TH,
19 WHICH IS A WEEK EARLIER, I'M GOING TO SET A HEARING ON
20 THESE MOTIONS IN LIMINE SO WE HAVE THAT DONE. AND I'LL
21 EXPECT YOU HERE AT 10:00 A.M. ON THAT DATE. AGAIN,
22 AUGUST 13TH, 2018, 10:00 A.M., THE MOTIONS IN LIMINE WILL
23 BE HEARD AND RULED ON. AND GOD FORBID THERE SHOULD BE ANY
24 MORE NEWS THAT I DON'T WANT TO HEAR.

25 MR. GLOVSKY: IF THERE'S ANY MORE NEWS, IT WILL
26 HAVE NOTHING TO DO WITH US, I'LL PUT IT THAT WAY. I HEAR

1 YOU VERY LOUD AND VERY CLEAR. AND I APPRECIATE ALL THE
2 TIME THE COURT HAS PUT INTO THIS CASE AND LOOK FORWARD TO
3 ACTUALLY TRYING THE CASE AND GETTING JUSTICE IN THE CASE.

4 ONE OTHER THING, YOUR HONOR. I DON'T ANTICIPATE
5 ANY PROBLEM WITH THESE DATES BECAUSE WE'RE TALKING A YEAR
6 FROM NOW, OR NINE MONTHS OR WHATEVER.

7 THE COURT: I DON'T KNOW HOW WE GOT TO BE A YEAR
8 FROM NOW.

9 MR. DOREN: I DON'T KNOW HOW IT GOT TO BE --

10 THE COURT: IT'S NOT NINE MONTHS EITHER, IT'S SIX
11 MONTHS. YOU MAY WANT TO GET A CALCULATOR.

12 MR. GLOVSKY: I'M GOING TO CALL OUR EXPERTS
13 IMMEDIATELY AFTER WE LEAVE THE COURTROOM TO MAKE SURE THAT
14 THERE'S NO ISSUE WITH THESE DATES. I DON'T HAVE ANY
15 REASON TO BELIEVE THAT THERE IS. AND WE'LL LET THE COURT
16 KNOW, WE'LL TALK WITH COUNSEL IMMEDIATELY IF THERE'S ANY
17 ISSUES, I DON'T THINK THAT THERE WILL BE. BUT I JUST
18 WANTED TO ADVISE THE COURT IN CASE. OUR EXPERT TRAVELS
19 AROUND THE COUNTRY A LOT, AND I JUST WANT TO MAKE SURE
20 HE'S AVAILABLE, BUT WE HAVE PLENTY OF TIME AND WE'LL DEAL
21 WITH THAT IMMEDIATELY.

22 THE COURT: ALL RIGHT. I THINK I HAVE SAID ALL I
23 WANT TO SAY UNTIL I GIVE MYSELF MY OWN TIMEOUT. THANK YOU
24 EVERYONE.

25 MR. DOREN: THANK YOU, YOUR HONOR.

26 MS. RICHARDSON: THANK YOU, YOUR HONOR.

(PROCEEDINGS CONCLUDED.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C-11 HON. JOHN C. GASTELUM, JUDGE

GILLEN WASHINGTON, AN)
INDIVIDUAL,)
)
PLAINTIFF,)
)
VS.)
)
AETNA INC., A CONNECTICUT)
CORPORATION, AETNA LIFE)
INSURANCE COMPANY, A)
MASSACHUSETTS CORPORATION,)
AND DOES 1 THROUGH 100,)
INCLUSIVE,)
)
DEFENDANTS.)
_____)

CASE NO. 30-2015-
00811734-CU-BC-CJC

REPORTER'S
CERTIFICATE

I, KAREN A. HUTCHISON, CSR NO. 6664, APPROVED
COURT REPORTER PRO TEMPORE IN AND FOR THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY
CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES, AND IS A FULL,
TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID
CAUSE.

DATED: FEBRUARY 14, 2018

KAREN A. HUTCHISON, CSR NO. 6664
APPROVED COURT REPORTER PRO TEMPORE

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