

CAUSE NO. _____

AETNA HEALTH INC. and
AETNA LIFE INSURANCE COMPANY,

Plaintiffs,

vs.

IFEOLUMIPO O. SOFOLA, M.D.,
NAVIN SUBRAMANIAN, M.D., and
HUMBLE SURGICAL HOSPITAL, LLC,

Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION
AND REQUEST FOR TEMPORARY INJUNCTION**

Plaintiffs Aetna Health Inc. and Aetna Life Insurance Company file this Original Petition and Request for Temporary Injunction ("Original Petition") as follows:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Texas Rule of Civil Procedure 190.4, Level 3.

II. SUMMARY OF THE RELIEF SOUGHT

2. Plaintiffs Aetna Health Inc. and Aetna Life Insurance Company (collectively, "Aetna") bring this action under the laws of this state against Defendants Ifeolumipo O. Sofola, M.D. ("Dr. Sofola"), Navin Subramanian, M.D. ("Dr. Subramanian"), and Humble Surgical Hospital, LLC ("HSH LLC"), for breach of contract, unlawful and excessive fees, and to recover damages and reasonable attorneys' fees for injuries Aetna suffered as a result of the Defendants' scheme to steer patients to Humble Surgical Hospital ("HSH"), a "non-participating" surgical hospital owned or leased by HSH LLC in which Drs. Sofola and Subramanian through their membership in HSH LLC had a financial interest. HSH in turn sought and received excessive

2011-73949 / Court: 152

fees from Aetna and its members, charging fees far higher than the reasonable charges for the same services in the relevant market.

3. HSH's strategy of overcharging patients is not limited to Aetna subscribers steered to it by Drs. Sofola and Subramanian. Other physicians having a financial interest in HSH LLC as well as physicians who do not have such an interest also refer patients to HSH even if it is a "non-participating" hospital under the Aetna member's insurance. Ordinarily, a patient's utilization of an "out-of-network" hospital, rather than a "participating" or "in-network" hospital, would result in higher out-of-pocket costs to the patient. To encourage patients to use HSH rather than a "participating" hospital, the HSH staff has on occasion assured patients that they will only owe the remaining portion of any "in-network" deductible or will otherwise not be subject to higher out-of-pocket costs. After admission, HSH submits excessive fee requests to Aetna, such as a bill for \$99,750 for the removal of ear wax, that it would not be able to submit were it a "participating" or "in-network" hospital.

4. Nor is HSH alone culpable for these unlawful practices. The referral of patients to specialty facilities owned by the referring physician or in which the referring physician otherwise has a financial or investment interest is known as "self-referral." The self-referral of an insured patient by a "participating" physician to a "non-participating" facility to gain direct and indirect financial benefit from the excessive fees charged by the "non-participating" facility is a wrongful practice resulting in the unjust enrichment of both the referring physician and the facility. Indeed, some physician investors in HSH have publicly boasted about high payments they receive as a result of having an "out-of-network" strategy.

5. In addition, on information and belief, some of the inflated charges for procedures performed by Dr. Sofola are intended in part to cover expenses for cosmetic procedures not disclosed on the false and misleading health care bills submitted to Aetna.

6. Aetna brings this action under the laws of this state for the disgorgement of these excessive fees and for other damages as set forth more particularly hereafter.

III. PARTIES

7. Aetna Health Inc. ("Aetna Health") is a Texas corporation with its principal place of business in Texas. Aetna Health, on behalf of itself and its Affiliates, among them Aetna Life Insurance Company, entered into separate Specialist Physician Agreements with Dr. Sofola and Dr. Subramanian governing the terms of their participation in Aetna's nationwide network of physicians, hospitals and other health care professionals.

8. Aetna Life Insurance Company ("ALIC") is a Connecticut corporation duly authorized to transact business in Texas.

9. Dr. Sofola is a physician specializing in otolaryngology and cosmetic surgery licensed to practice medicine in Texas. At the time of the events made the basis of this action, Dr. Sofola provided services at 2000 Crawford Street, Suites 800 and 900, Houston, Harris County, Texas, at HSH in Humble, Harris County, Texas, at Houston Allergy & Asthma Associates, 9301 Pineroft Drive, The Woodlands, Montgomery County, Texas, and was reimbursed by Aetna for his services at 2000 Crawford Street, Houston, Harris County, Texas. Dr. Sofola is a member of HSH LLC. Both he and HSH sought reimbursement of fees from Aetna for medical services rendered to individuals who were Aetna members. Dr. Sofola may be served with process at 2000 Crawford Street, Houston, Harris County, Texas, or 9301 Pineroft Drive, The Woodlands, Montgomery County, Texas.

10. Dr. Subramanian is a physician specializing in orthopedic surgery licensed to practice medicine in Texas providing services at 1315 St. Joseph Parkway, Suite 800, Houston, Harris County, Texas, at 5420 West Loop South, Suite 2300, Bellaire, Harris County, Texas, and at HSH in Humble, Harris County, Texas. Dr. Subramanian is a member of HSH LLC. Both he and HSH sought reimbursement of fees from Aetna for medical services rendered to individuals who were Aetna members. Dr. Subramanian may be served with process at 1315 St. Joseph Parkway, Suite 800, Houston, Harris County, Texas, or where he resides in Houston, Harris County, Texas.

11. HSH LLC is a Texas limited liability company with its registered office at 5120 Woodway Drive, Houston, Harris County, Texas. HSH is a multi-specialty surgical hospital located at 1475 FM 1960 East Bypass, Humble, Harris County, Texas. HSH LLC's registered agent for the service of process is K&S Consulting, LLC, 5120 Woodway Drive, Suite 7012, Houston, Texas 77056.

12. In addition to Drs. Sofola and Subramanian, the members of HSH LLC who are also participating physicians in Aetna's network include Brad Bachmann, D.P.M., Michael L. Blackwell, M.D., Jack Chapman, M.D., Mohammed-Tarik Al-Fahl, M.D., Abdel K. Fustok, M.D., Gregory Harvey, M.D., William M. Hayes, M.D., Keith W. Johnson, M.D., Gary Edward Kraus, M.D., Robert A. Launikitis, M.D., Kenneth J. Lee, M.D., and Robert Alan Moore, Jr., M.D. On information and belief, these individuals have also caused or permitted HSH to engage in the excessive practices alleged herein or otherwise committed, participated in, profited from, solicited others to engage in, knowingly assisted, conspired with or urged others to commit the wrongful billing practices alleged herein. Aetna may amend this Original Petition to include

allegations relating to one or more of these individuals as well as other physicians who are not members of HSH LLC.

IV. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit of this Court.

14. Venue is proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1)-(3) and § 15.005 (West 2002).

V. FACTUAL BACKGROUND

A. The Health Care Products Provided By Aetna

15. Aetna markets policies of insurance and other health care products. These policies and products provide access to in-network services rendered by participating providers such as Drs. Sofola and Subramanian who have contracted with Aetna. Aetna's plans also allow for out-of-network services rendered by non-participating hospitals or other facilities such as HSH which have not contracted with Aetna. For each patient-beneficiary on whom they perform surgery at HSH, Drs. Sofola and Subramanian seek payment for their professional fees. For each such patient-beneficiary, HSH separately seeks payment from Aetna for facility fees relating to each surgery performed by Dr. Sofola or Dr. Subramanian.

"In-Network" Reimbursement To "Participating" Providers

16. Aetna's members may receive "in-network" health care from a network of "participating" medical providers who have entered into contracts with Aetna to render services to subscribers in return for fees set by the terms of the contract.

17. Medical providers who enter into contracts with Aetna are commonly known as "participating" providers, and the contracts between Aetna and participating providers require

the participating providers to accept negotiated payments for services as payment in full and prohibit the providers from seeking additional payments from their patients. Thus, for Drs. Sofola and Subramanian, their professional fees are fixed at a negotiated amount by their Specialist Physician Agreements. The member ordinarily has no financial obligation to the participating provider beyond a small, fixed copayment and the participating provider is contractually prohibited from billing the member for any other amounts, except under limited circumstances.

18. The agreements between Aetna and its participating providers allow Aetna efficiently to meet its members' health care needs through its provider network, to anticipate and control the cost of care, to reduce its financial risk for insured plans, to reduce the financial risk faced by members for health care services, and to promote the quality of care through its credentialing and peer review processes.

19. Members have ready access to participating providers. Aetna publishes directories of participating providers to its members who consume health care services in Texas. Members may obtain medical services from these providers with little or no financial risk or out-of-pocket expense.

“Out-of-Network” Reimbursement To “Non-Participating” Providers

20. Some of Aetna's policies of insurance and health care products provide “out-of-network” health care from “non-participating” providers who have not entered into contracts with Aetna and have not agreed to accept negotiated payments as payment in full for services rendered. Thus, unlike Drs. Sofola and Subramanian, when HSH separately seeks payment from Aetna for its facility fees for the surgeries performed at HSH by Drs. Sofola or Subramanian, its facility fees are not set in advance by the terms of a fee agreement with Aetna.

21. Non-participating providers set their own fees for services rendered to their patients subject to the laws and regulations which govern the practices of medicine in Texas.

22. Aetna policies of insurance and other products that cover services by non-participating providers may limit the reimbursement available for out-of-network services and require members to contribute to the cost of care rendered by non-participating providers.

23. In such instances, the doctor's patient, or Aetna's member, may be responsible for payment of charges for services rendered by non-participating providers which exceed the amount of the reimbursement paid by Aetna. The difference between the charge a patient agrees to pay or is responsible to pay, and the amount of reimbursement paid by Aetna, is referred to as a balance bill.

24. Non-participating providers may not recover unreasonable or excessive fees or fees not agreed to pursuant to a contract with the patient. Under general principles of equity and fairness and contract law, a non-participating provider's reimbursement is limited to the fair value of its services. Moreover, absent full and complete disclosure to the patient, the patient's uninformed agreement to pay a non-participating provider's billed charges in excess of the fair value thereof is no bar to the disgorgement of the unreasonable overcharge.

25. Patients are encouraged within the health care system to utilize participating providers, an arrangement beneficial to both the participating providers, who enjoy increased patient traffic, and the patient, who receives appropriate, high quality health care services at a fair and reasonable cost. If a patient must pay coinsurance, deductibles and other portions of a hospital's charges for services, that patient will be sensitive to health care costs and utilize hospitals with lower fees, which makes medical insurance less expensive for everyone. Studies

have shown that patients who pay even a small portion of their care will be better health care consumers.

26. These plan provisions also protect Aetna's network of hospitals and other health care professionals by encouraging patients to use in-network services at little or no out-of-pocket cost. This "steering" effect encourages hospitals and other health care professionals to become part of Aetna's network. Health care providers have less incentive to participate in Aetna's network if a patient can obtain out-of-network health care from non-participating providers without paying coinsurance, deductibles or other balance bill charges.

27. Particularly damaging to Aetna and its members is the situation in which a participating provider without disclosure refers a patient to a non-participating hospital or surgery center which the participating provider knows will bill an unreasonable, excessive and inflated amount for its services. It is a breach of the provider's contract with Aetna and a betrayal of patient confidence to engage in a "bait-and-switch" arrangement in which patients, who are encouraged to utilize participating physicians and hospitals whenever possible, are directed by the participating provider to use a non-participating hospital in which the referring physician has a financial interest. Moreover, patients reasonably expect that the services provided will not be billed at rates outrageously in excess of the going rate. Patients trust the participating provider to arrange and coordinate health care services consistent with their best interests and not to gouge and exploit the system.

28. Thus, for example, with respect to the procedure to remove ear wax alleged in paragraph 3 hereof, the in-network physician breaches his contract with Aetna by steering his patient to HSH, knowing HSH would then submit a \$99,750 charge to Aetna. Both the in-network physician and HSH deceive their patient and Aetna by concealing from the patient that

HSH intends to seek an outrageously inflated \$99,750 reimbursement from Aetna for a simple ear wax removal procedure, a charge to which an informed patient would never agree for fear of incurring a substantial balance bill.

29. Even when the patient is reassured that HSH will not attempt to collect more from the patient than the out-of-pocket coinsurance, deductible or other patient-responsibility charges that the patient would incur were HSH an in-network hospital, both Aetna and the patient are deceived. Aetna is deceived, because by submitting an inflated and unreasonable bill for payment without disclosing its waiver agreement with the patient, HSH misrepresents the charge the patient actually agreed to pay. The patient is also deceived, because HSH's intent to overbill Aetna is not disclosed, and injured, because such egregious billing practices ultimately result in the patient paying more for health care services as the cost of health care insurance rises in response to the excessive fees charged by providers who engage in this type of "out-of-network" strategy.

30. Finally, a self-referral arrangement from which the physician wrongfully profits is unethical, because it is not structured to enhance access to appropriate, high quality health care services, but rather to benefit both the over-charging non-participating provider and, indirectly through a financial interest in the non-participating provider, the self-referring participating provider.

B. The Contractual Relationships Between Aetna And Drs. Sofola And Subramanian

31. On or about March 1, 2009, and December 15, 2002, Drs. Sofola and Subramanian, respectively, entered into a Specialist Physician Agreement with Aetna Health on behalf of itself and its Affiliates, including ALIC. These agreements made them participating

providers in Aetna's network and imposed important restrictions on their conduct vis-a-vis Aetna and their patients who are Aetna members.

32. For example, concerning adjustments to requests for reimbursement, Drs. Sofola and Subramanian agreed "to permit rebundling to the primary procedure those services considered part of, incidental to, or inclusive of the primary procedure and make other adjustments for inappropriate billing or coding (e.g., duplicative procedures or submissions, mutually exclusive procedures, gender/procedure mismatches, age/procedure mismatches)." (Specialist Physician Agreement, Sec. 4.1.1) Rebundling prevents separate billing of incidental services and included services performed at the same time as the primary procedure.

33. For so-called "gated" plans requiring a referral from the patient's primary care physician, Drs. Sofola and Subramanian agreed to "render services to Members *only* at Participating Hospitals or other Providers, or those inpatient extended care, and ancillary service facilities which have otherwise been approved in advance by [Aetna]." (Specialist Physician Agreement, Sec. 2.3) (emphasis added) They also agreed to hold members harmless and "in no event" would they "bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse against" a plan member. (Specialist Physician Agreement, Sec. 4.3.2)

34. As participating providers, Drs. Sofola and Subramanian may not ignore the terms of their contracts for their own benefit or for the benefit of an out-of-network provider. For example, they may not pursue a member for payment of services that are not covered under the insurance policy or other product unless the member was advised in writing prior to the services being rendered that the specific services were not covered and the member agreed in writing to pay for such services after being so advised. (Specialist Physician Agreement, Sec. 4.3.1)

35. Similarly, Drs. Sofola and Subramanian may not render covered services using an out-of-network hospital that bills for its separate services at rates in excess of the reasonable and customary charges for such services, because the Specialist Physician Agreement requires them to “arrange and coordinate the overall provision of Covered Services to Members under the terms and conditions of the Member’s applicable Plan.” (Specialist Physician Agreement, Sec. 2.1) Specifically, where the use of out-of-network facilities is allowed, Aetna determines a fair reimbursement for the out-of-network services in such circumstances. Any amount in excess of the allowed reimbursement amount is not covered and may result in a balance bill. For this reason, absent prior, informed consent, Drs. Sofola and Subramanian are not permitted by the terms of their Specialist Physician Agreements to refer an Aetna member to a non-participating hospital under circumstances that would create a balance bill obligation for the member.

C. Defendants’ Scheme To Impose Excessive And Unreasonable Charges For Services On Patients By Wrongfully Self-Referring Patients To An Out-Of-Network Hospital That Overbilled For Its Services

36. At all times, Drs. Sofola and Subramanian held themselves out to the public as participating providers within Aetna’s provider network. They benefitted from Aetna’s efforts to steer patients to them through participating provider directories and other sources readily available to Aetna beneficiaries. They also benefitted from their patients’ reasonable expectation that because they are receiving treatment from an in-network provider, there is no reason to believe they will incur a substantial balance bill or that the hospital recommended by their in-network physician will submit false, misleading or excessive reimbursement requests to Aetna.

37. Taking advantage of their participating provider status and the reasonable expectations of their patients, and without disclosing their financial interest in HSH LLC, Drs. Sofola and Subramanian pursued an “out-of-network” strategy pursuant to which they induced

Aetna beneficiaries to receive medical treatment from them utilizing HSH, an out-of-network hospital. On information and belief, Drs. Sofola and Subramanian knew or negligently ignored that HSH overcharged for its services, waived copayments, deductibles or other balance bill charges, and facilitated the concealment of cosmetic or similar services, performed in connection with other procedures. Such conduct is a violation of their respective obligations under their Specialist Physician Agreements with Aetna.

38. A means by which Defendants profited at the expense of Aetna and Aetna beneficiaries was HSH's calculated and intentional overcharging for its services made possible by HSH's out-of-network status and the waiver of coinsurance, deductibles or other balance bill charges. HSH's billed charges substantially exceed the usual, customary and reasonable billed charges for the same services in Harris County and its environs. In some instances, HSH's charges in connection with surgeries performed by Dr. Sofola were more than 225% of the usual, customary and reasonable charges.

39. On information and belief, despite their knowledge that HSH's charges were unreasonable and excessive, Defendants did not inform their patients or disclose to them that, as members of HSH LLC, they would benefit financially from the excessive hospital charges, that Aetna would not pay the entire medical bill, or that the patient would be responsible for the balance bill not paid by Aetna. Alternatively, when a patient expressed concern about a possible balance bill obligation, Drs. Sofola and Subramanian knew that HSH staff members would "seal the deal" by reassuring patients to the extent necessary that the patient's use of an out-of-network hospital would result in no greater out-of-pocket charges than the patient's use of an in-network hospital.

D. Defendants' Submission Of False And Misleading Health Insurance Information To Aetna

40. By seeking reimbursement from Aetna without disclosing any "waivers" of coinsurance, deductibles or other charges which an out-of-network patient would ordinarily incur, HSH knowingly misrepresented and knowingly overstated its charges. To the extent of their knowledge of and complicity in HSH's practices, Drs. Sofola and Subramanian are culpable to the same degree as HSH as co-conspirators in HSH's wrongful conduct.

41. For each procedure in which Drs. Sofola and Subramanian utilized HSH to provide hospital services, HSH sought outrageous fee reimbursement from Aetna. These amounts were in addition to amounts submitted by Drs. Sofola and Subramanian as participating providers. Collectively, the reimbursements sought from Aetna were substantially in excess of the usual, customary and reasonable charges for such services, and thus were manifestly unconscionable and overreaching. Nothing in the nature and circumstances of the services rendered by Defendants justifies the excessive charges submitted to Aetna.

42. Defendants sought reimbursement from Aetna for the purpose of obtaining payment for services rendered by them to Aetna beneficiaries. In seeking these reimbursements, Defendants intended that Aetna rely on their representations contained therein in issuing reimbursement for the services billed. Aetna reasonably relied on these representations and issued payment to Defendants, unaware that concealed among the electronically submitted data were intentional overcharges and overstated charges resulting from HSH's undisclosed waivers of coinsurance, deductibles or other charges.

VI. CAUSES OF ACTION

COUNT ONE

Breach Of Contract By Drs. Sofola And Subramanian

43. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 42 hereof.

44. The Specialist Physician Agreements prohibit Drs. Sofola and Subramanian from self-referring patients to HSH, a non-participating hospital in which they have a financial interest by reason of their membership in HSH LLC, for the purpose of enhancing their collective revenue by overcharging patients for hospital and other services.

45. As members of HSH LLC, Drs. Sofola and Subramanian benefitted from HSH's overcharges by sharing, directly or indirectly, in the excessive and unreasonable fees for hospital services charged by HSH. Such conduct is a breach of their respective Specialist Physician Agreement with Aetna and a betrayal of trust reasonably arising by virtue of the circumstances of their status as preferred providers in Aetna's network.

46. By rendering services to their patients under the circumstances herein alleged through an out-of-network hospital that waived coinsurance, deductibles or other charges and billed for its services in excess of the reasonable and customary charges, Drs. Sofola and Subramanian breached their Specialist Physician Agreements by failing to arrange and coordinate the overall provision of covered services for Aetna members.

47. Drs. Sofola and Subramanian also breached their respective Specialist Physician Agreement with Aetna by failing, on information and belief, to obtain prior, informed consent from their patients for the referral of their patients to a non-participating hospital under

circumstances that they knew would create a balance bill obligation absent undisclosed waivers or other sidebar reassurances that they knew would not be disclosed to Aetna.

48. As a result of their breaches of their respective Specialist Physician Agreement, Aetna has suffered damages in payments made to HSH for excessive and unreasonable charges in excess of the minimum jurisdictional limits of this Court. Plaintiffs seek recovery of these damages.

COUNT TWO

Conspiracy To Overcharge Aetna Beneficiaries Against All Defendants

49. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 48 hereof.

50. Defendants conspired individually and through their affiliation with HSH to direct Aetna members to a non-participating hospital for the purpose of facilitating a scheme to recover reimbursement from Aetna for charges that were substantially in excess of the usual, customary and reasonable charges for services rendered to Aetna beneficiaries. In connection with that scheme, Defendant HSH LLC conspired with and facilitated the actions of Drs. Sofola and Subramanian in breaching their respective Specialist Physician Agreement with Aetna.

51. Defendants' wrongful conduct has proximately caused Plaintiffs to sustain damages in excess of the minimum jurisdictional limits of this Court. Plaintiffs seek recovery of these damages.

52. Plaintiffs are also entitled to exemplary damages for the harm caused by the foregoing wrongful conduct.

COUNT THREE
Tortious Interference By HSH

53. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 52 hereof.

54. HSH LLC had actual knowledge of the existence of the Specialist Physician Agreements between Aetna and Drs. Sofola and Subramanian.

55. HSH LLC willfully and intentionally interfered with Dr. Sofola's and Dr. Subramanian's performance of their contractual obligations to Aetna under their respective Specialist Physician Agreement by, among other things, inducing them to utilize HSH, an out-of-network hospital, for hospital services in connection with procedures performed by Drs. Sofola and Subramanian as in-network providers, for which services HSH (a) sought reimbursement greatly in excess of the usual, customary and reasonable billed charges for the same services in the relevant market and, (b) through its staff or other representatives, reassured patients that they would not pay more in coinsurance, deductibles or other patient-responsibility charges than they would at an in-network facility.

56. HSH LLC's wrongful interference was willful and malicious.

57. The actions of HSH LLC were calculated to cause and did cause damage to Aetna and financial benefit to HSH LLC by reason of Aetna's payment of excessive, unreasonable and unnecessary fees and the diversion of patients from available in-network facilities.

58. The actions of HSH LLC were the proximate cause of substantial harm and actual damages to Aetna in excess of the minimum jurisdictional limits of this Court. Aetna seeks recovery of these damages.

59. Plaintiffs are also entitled to exemplary damages for the harm caused by the foregoing interference.

COUNT FOUR

Common Law Fraud Against All Defendants

60. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 59 hereof.

61. Defendants entered into a scheme to defraud Aetna through a pattern of false and misleading activities for the purpose of causing Aetna to reimburse them for charges greatly in excess of the usual, customary and reasonable billed charges for the same services in Harris County and its environs.

62. As part of this scheme, Drs. Sofola and Subramanian referred patients to HSH for out-of-network hospital services, which services Defendants knew would be charged at billed rates substantially in excess of the usual, customary and reasonable charges for the same services in the relevant market. Defendants collectively made false and misleading statements and representations for the purpose of recovering reimbursement from Aetna for charges that were substantially in excess of the usual, customary and reasonable charges for such services, and thus were manifestly unconscionable and overreaching. Nothing in the nature and circumstances of the services rendered by Defendants justifies the excessive charges sought from Aetna.

63. Defendants calculated that by reason of the manner in which they sought reimbursement and for other reasons, at least some of the overcharges would not be discovered by Aetna, thereby resulting in a windfall to HSH LLC in which Drs. Sofola and Subramanian would share by reason of their ownership interests in HSH LLC.

64. In seeking reimbursement for excessive charges, Defendants did not disclose waivers, reassurances or other promises made to induce patients to use HSH including, on information and belief, reassurances that they would not pay more in coinsurance, deductibles or other patient-responsibility charges than they would at an in-network facility. HSH misrepresented its facility charges, because the reimbursement sought from Aetna was not for the amount that the patient actually agreed to pay, but for an inflated amount.

65. In reasonable reliance on the false and misleading information, Aetna was damaged in an amount in excess of the minimum jurisdictional limits of this Court.

66. Plaintiffs are also entitled to exemplary damages for the harm caused by the foregoing interference.

COUNT FIVE
Unjust Enrichment Against All Defendants

67. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 66 hereof.

68. Defendants, collectively and individually, have wrongfully billed for services in an amount greatly in excess of the usual, customary and reasonable billed charges for the same services in Harris County and its environs. In particular, HSH sought from Aetna reimbursement that was excessive and unreasonable, and for which Aetna has paid. On information and belief, by reason of their financial interest in HSH LLC, Drs. Sofola and Subramanian have directly or indirectly received a substantial financial benefit from HSH's overcharges.

69. In equity and good conscience, Defendants may not retain a benefit in excess of the reasonable value of the services rendered.

70. Plaintiffs, by reason of the payment of these amounts, has the right, directly, by subrogation or otherwise, to recover damages and disgorgement by Defendants of all amounts in excess of the usual, customary and reasonable billed charges for the covered services rendered to Aetna beneficiaries.

VII. REQUEST FOR TEMPORARY INJUNCTION

71. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 70 hereof.

72. After a full evidentiary hearing, Plaintiffs request a writ of temporary injunction to preserve the status quo pending trial on the merits of Plaintiffs' claims and, after trial on the merits, a permanent injunction, preventing Defendants, their officers, agents, servants, employees, representatives, members and those in active concert or participation with them, from balance billing Aetna plan members or otherwise seeking to hold Aetna plan members responsible for any additional payments or charges for services previously rendered.

73. Plaintiffs may amend this Original Petition to include in this request for temporary and permanent injunction, in addition to the named Defendants, any member of HSH LLC including those identified in paragraph 12 hereof.

74. Aetna has stated causes of action against the Defendants seeking legal and equitable relief for breach of contract, unlawful and excessive fees, inequitable conduct and for damages for injuries suffered as a result of a scheme and common purpose to steer Aetna plan members to HSH, a non-participating surgical hospital, which in turn charged fees higher than the usual, customary and reasonable billed charges for the same services in the relevant market.

75. Aetna has shown a probable right to the relief sought and a probable, imminent and irreparable injury to Aetna and its members in the interim should the Defendants proceed

against their own patients to collect charges in excess of the patient responsibility amounts set forth on the EOBs issued by Aetna.

VIII. ATTORNEYS' FEES

76. Aetna repeats and incorporates herein by reference the allegations in paragraphs 1 through 75 hereof.

77. As a result of the foregoing, Aetna has been forced to retain the law firm of Andrews Kurth LLP in pursuit of the claims against Defendants in this lawsuit. Aetna has agreed to pay its attorneys a reasonable fee for said services. Aetna is entitled to recover its reasonable and necessary attorneys' fees from Defendants under Chapter 38 of the Texas Civil Practice & Remedies Code for, among other things, Defendants' respective breaches of contract.

IX. JURY DEMAND

78. Pursuant to Texas Rule of Civil Procedure 216, Aetna make this written request for trial by jury of all issues so triable and tenders the required jury fee.

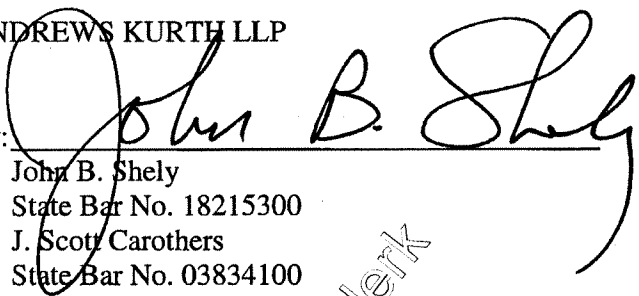
X. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Aetna requests judgment in its favor against Defendants for all its damages, including costs of court and attorneys' fees, and such other and further relief at law or in equity to which it may be entitled.

Respectfully submitted,

ANDREWS KURTH LLP

By: _____


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**ATTORNEYS FOR PLAINTIFFS AETNA
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INSURANCE COMPANY**

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