

No. 15-10210

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

AETNA LIFE INSURANCE COMPANY,

Plaintiff–Appellant,

v.

METHODIST HOSPITALS OF DALLAS, doing business as METHODIST
MEDICAL CENTER, doing business as CHARLTON MEDICAL CENTER; TEXAS
HEALTH RESOURCES; MEDICAL CENTER EAR, NOSE & THROAT ASSOCIATES
OF HOUSTON, P.A.,

Defendants–Appellees.

On Appeal from the United States District Court
for the Northern District of Texas
No. 3:14-cv-347

**APPELLANT’S UNOPPOSED MOTION FOR JUDICIAL NOTICE
OF STATE COURT DECISION**

John Bruce Shely
ANDREWS KURTH LLP
Suite 4200
600 Travis Street
Houston, TX 77002
(713) 220-4105

Miguel A. Estrada
Geoffrey M. Sigler
Matthew Scott Rozen
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

Counsel for Appellant

CERTIFICATE OF INTERESTED PERSONS

No. 15-10210

AETNA LIFE INSURANCE COMPANY,
Plaintiff–Appellant,

v.

METHODIST HOSPITALS OF DALLAS, doing business as METHODIST
MEDICAL CENTER, doing business as CHARLTON MEDICAL CENTER; TEXAS
HEALTH RESOURCES; MEDICAL CENTER EAR, NOSE & THROAT ASSOCIATES
OF HOUSTON, P.A.,
Defendants–Appellees.

The undersigned counsel of record certifies that the following interested persons and entities described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

A. Plaintiff–Appellant

Aetna Life Insurance Company

B. Attorneys for Plaintiff–Appellant

Miguel A. Estrada
Geoffrey M. Sigler
Matthew Scott Rozen
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

John Bruce Shely
ANDREWS KURTH LLP
Suite 4200
600 Travis Street
Houston, TX 77002
(713) 220-4105

C. Affiliates of Plaintiff–Appellant

Aetna Life Insurance Company’s affiliate, Aetna Health Inc., has an interest in the outcome of this case, as it is a party in related litigation. Aetna Health Inc. is owned by Aetna Health Holdings, LLC. Aetna Life Insurance Company and Aetna Health Holdings, LLC are owned by Aetna Inc.

D. Defendants–Appellees

Methodist Hospitals of Dallas, doing business as Methodist Medical Center, doing business as Charlton Medical Center
Texas Health Resources
Medical Center Ear, Nose & Throat Associates of Houston, P.A.*

E. Attorneys for Defendants–Appellees

Mikal C. Watts
William J. Maiberger, Jr.
WATTS GUERRA CRAFT LLP
4 Dominion Drive
Building 3, Suite 100
San Antonio, TX 78257
(210) 447-0500

* Medical Center Ear, Nose & Throat Associates of Houston, P.A. is no longer a party to this action because Aetna Life’s claims against it have been dismissed. In the interest of completeness, however, its prior involvement has been noted here exclusively for purposes of evaluating possible disqualification or recusal.

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF AUTHORITIES.....	v
MOTION FOR JUDICIAL NOTICE OF STATE COURT DECISION	1
CONCLUSION	4

TABLE OF AUTHORITIES

Page(s)

Cases

Davis v. Bayless,
70 F.3d 367 (5th Cir. 1995) 3

Gray ex rel. Rudd v. Beverly Enters.-Miss., Inc.,
390 F.3d 400 (5th Cir. 2004) 3

Mass. v. Westcott,
431 U.S. 322 (1997) 3

NCBN Tex. Nat’l Bank v. Johnson,
11 F.3d 1260 (5th Cir. 1994) 3

Norris v. Hearst Trust,
500 F.3d 454 (5th Cir. 2007) 3

Statin v. Deutsche Bank Nat’l Trust Co.,
599 F. App’x 545 (5th Cir. 2014) 3

United States v. Hawkins,
566 F.2d 1006 (5th Cir. 1978) 3

Statute

Tex. Ins. Code §§ 1301.101 *et seq.* 1

Rules

5th Cir. R. 27.4 1

Fed. R. App. P. 27 1

Fed. R. Evid. 201(b)(2) 1, 2

Tex. R. Civ. Proc. 76a(1) 3

Other Authority

<http://accesstarrantcounty.com/en/district-clerk/services/district-clerk-document-lookup.html> 3

**MOTION FOR JUDICIAL NOTICE
OF STATE COURT DECISION**

Pursuant to Federal Rule of Appellate Procedure 27 and Federal Rule of Evidence 201(b)(2), Aetna Life Insurance Company (“Aetna Life”) respectfully moves this Court to take judicial notice of the contents and entry of a state trial court order that the district court referred to and quoted in its decision in this case. *See* Order Overruling Defendant Aetna Health, Inc.’s Motion for Partial Summary Judgment to Preclude Prompt Pay Penalties for Self-Funded Claims, *Tex. Health Res. v. Aetna Health, Inc.*, No. 17-269305-13 (Tex. Tarrant Cnty. Dist. Oct. 3, 2014) (the “Tarrant County Order”) (attached). Aetna Life will contend in this appeal that the district court erred by deferring to the Tarrant County Order. Aetna Life seeks this relief so that the Court can have ready access to the Tarrant County Order given its relevance to this appeal. In accordance with Fifth Circuit Rule 27.4, Aetna Life has contacted all other parties to this appeal to determine whether any party will file an opposition. Appellees do not oppose the requested relief.

1. This appeal arises from an attempt by two Texas hospitals to expand the scope of the Texas prompt-pay statute, Tex. Ins. Code §§ 1301.101 *et seq.*, and related provisions to claims paid under “self-funded” health benefits plans, through which many employers establish and fund health benefits for their employees. Aetna Life, which serves

as the administrator for self-funded plans, brought this declaratory-judgment action after receiving a demand from the appellee hospitals for millions of dollars in statutory prompt-pay penalties. Aetna Life seeks a declaration that self-funded plans and their administrators, like Aetna Life, are not liable under the Texas prompt-pay statute.

One of Aetna Life's arguments is that the statute by its terms does not apply to these plans. The district court did not directly address this threshold question. Instead, the court "defer[red]" to the Tarrant County court's "non-final," one-paragraph ruling that the Texas prompt-pay statute "applies to Aetna with respect to claims administered by Aetna for self-funded plans." ROA.7945-7946 (summary-judgment order). The state court order containing that ruling—the Tarrant County Order—does not appear in the record, but the order was before the district court and the district court quoted it in the summary-judgment order at issue in this appeal.

2. This Court has authority to take judicial notice of the contents and entry of the Tarrant County Order under Federal Rule of Evidence 201(b)(2). Rule 201(b)(2) provides that a court "may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Under that rule, this Court has recognized its authority to take judicial notice of "official, public record[s]" when those records are placed "on file with this Court." *United States v.*

Hawkins, 566 F.2d 1006, 1008 n.2 (5th Cir. 1978) (citing *Mass. v. Westcott*, 431 U.S. 322, 323 n.2 (1977)); see also *NCBN Tex. Nat'l Bank v. Johnson*, 11 F.3d 1260, 1263 n.2 (5th Cir. 1994) (“We take judicial notice of . . . official public records on file with this circuit.”). This Court thus routinely takes judicial notice of state court orders and upholds district court decisions taking such notice. See, e.g., *Gray ex rel. Rudd v. Beverly Enters.-Miss., Inc.*, 390 F.3d 400, 407-08 n.7 (5th Cir. 2004) (taking judicial notice of unpublished state court decisions); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (district court properly took judicial notice of state court order); *Davis v. Bayless*, 70 F.3d 367, 372 (5th Cir. 1995) (same).

The Tarrant County Order is an official public record that is “open to the general public” under Texas Rule of Civil Procedure 76a(1) and publicly available through Tarrant County District Clerk Court Document Lookup Service. See <http://accesstarrantcounty.com/en/district-clerk/services/district-clerk-document-lookup.html>. The Tarrant County Order is now on file with this court as an attachment to this Motion. Judicial notice is therefore appropriate.

This Court may take judicial notice of the contents and entry of the Tarrant County Order even though it does not appear in the district court record. “An appellate court may take judicial notice of facts, even if such facts were not noticed by the trial court.” *Statin v. Deutsche Bank Nat'l Trust Co.*, 599 F. App'x 545, 548 (5th Cir. 2014) (per curi-

am). Here, the case for judicial notice is particularly strong because the district court quoted and “defer[red]” to the Tarrant County Order in the decision at issue in this appeal. ROA.7945-7946 (quoting Tarrant County Order 1).

Finally, judicial notice of the contents of the Tarrant County Order is important to appellate review in this case because one of Aetna Life’s arguments is that the district court erred by deferring to the Order. Taking judicial notice of the contents of the Tarrant County Order will help this Court to assess this argument, which will be fully addressed in Aetna Life’s main appeal briefing.

CONCLUSION

For the foregoing reasons, this Court should take judicial notice of the contents and entry of the attached Tarrant County Order.

June 1, 2015

John Bruce Shely
ANDREWS KURTH LLP
Suite 4200
600 Travis Street
Houston, TX 77002
(713) 220-4105

Respectfully submitted,

/s/ Miguel A. Estrada
Miguel A. Estrada
Geoffrey M. Sigler
Matthew Scott Rozen
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2015, an electronic copy of the foregoing Motion for Judicial Notice of State Court Decision was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and that service will be accomplished by the appellate CM/ECF system.

/s/ Miguel A. Estrada
Miguel A. Estrada
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

CERTIFICATE OF ELECTRONIC COMPLIANCE

I hereby certify that on June 1, 2015, this Motion for Judicial Notice of State Court Decision was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit through the Court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov>. I further certify that: (1) required privacy redactions have been made pursuant to this Court's Rule 25.2.13, (2) the electronic submission is an exact copy of the paper document pursuant to this Court's Rule 25.2.1, and (3) the document has been scanned with the most recent version of Microsoft Forefront Endpoint Protection and is free of viruses.

/s/ Miguel A. Estrada
Miguel A. Estrada
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

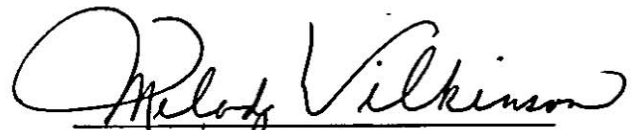
NO. 017-269305-13

TEXAS HEALTH RESOURCES	*	IN THE DISTRICT COURT
	*	
Plaintiff,	*	
	*	
VS.	*	TARRANT COUNTY, TEXAS
	*	
AETNA HEALTH, INC.	*	
	*	
Defendant.	*	17 th JUDICIAL DISTRICT

**ORDER OVERRULING DEFENDANT AETNA HEALTH, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT TO
PRECLUDE PROMPT PAY PENALTIES FOR SELF-FUNDED CLAIMS**

On the date entered below, the parties, by and through their attorneys of record, came before the Court, and the Court heard Aetna Health, Inc.'s Motion for Partial Summary Judgment to Preclude Prompt Pay Penalties for Self-Funded Claims. The Court finds the Texas Prompt Pay Act applies to Aetna with respect to claims administered by Aetna for self-funded plans. Accordingly, Aetna's Motion for Partial Summary Judgment to Preclude Prompt Pay Penalties for Self-Funded Claims is hereby in all respects OVERRULED.

ENTERED this 3rd day of ~~September~~ ^{October}, 2014.


 Hon. Melody Wilkinson
 JUDGE PRESIDING


E-MAILED
10-7-14

Court's Minutes
Transaction # 90

AW

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

June 02, 2015

Mr. Miguel Angel Estrada
Gibson, Dunn & Crutcher, L.L.P.
1050 Connecticut Avenue, N.W.
Suite 900
Washington, DC 20036-5306

Mr. Matthew Scott Rozen
Gibson, Dunn & Crutcher, L.L.P.
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Mr. John Bruce Shely
Andrews Kurth, L.L.P.
600 Travis Street
Suite 4200
Houston, TX 77002

Mr. Geoffrey M. Sigler
Gibson, Dunn & Crutcher, L.L.P.
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

No. 15-10210 Aetna Life Insurance Company v. Methodist
Hospitals of Dallas, et al
USDC No. 3:14-CV-347

Dear Counsel,

The motion to for judicial notice is filed and will be submitted to the court along with the merits of the appeal when briefing is complete.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Peter Conners".

By: _____
Peter A. Conners, Deputy Clerk
504-310-7685

cc: Mr. Mikal Watts