

No. 15-10210

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

* * *

AETNA LIFE INSURANCE COMPANY,
Plaintiff-Appellant,

v.

METHODIST HOSPITALS OF DALLAS, ET AL.,
Defendants-Appellees.

* * *

Appeal Under 28 U.S.C. § 1291 From A Final Decision Of The
United States District Court For The Northern District of Texas
Dallas Division

Case No. 3:14-cv-00347-M

The Honorable Barbara M.G. Lynn

* * *

**APPELLEES' RESPONSE TO HEALTH CARE SERVICE
CORPORATION'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

* * *

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TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS:

Appellees Methodist Hospitals of Dallas and Texas Health Resources (“Appellees”) respectfully file this Response to Health Care Service Corporation’s Motion for Leave to File *Amicus Curiae* Brief.

I.

On June 8, 2015, Health Care Service Corporation (“HCSC”) moved for leave to file a brief as *amicus curiae* in support of Plaintiff-Appellant Aetna Life Insurance Company (“Aetna”). In paragraph six of the Motion, HCSC represented that counsel for Appellees refused to consent to HCSC’s motion. This is a misrepresentation of the facts, to which Appellees must respond.

II.

On June 3, 2015, Martin J. Bishop, counsel for HCSC, notified Appellees’ counsel by email that HCSC intended to file an amicus brief in the instant appeal. *See* Exhibit A. On June 4, 2015, after consulting with Appellees, William J. Maiberger, Jr., counsel for Appellees, responded to Mr. Bishop, relaying concerns expressed by Appellee Texas Health Resources (“THR”). *Id.* Namely, THR viewed HCSC’s intent to file an amicus brief as inconsistent with recent developments

in the business relationship between THR and HCSC. *Id.* As such, Mr. Maiberger requested that Mr. Bishop advise him of whether HCSC would withdraw its request and not seek to file an amicus brief. *Id.* Rather than responding to Mr. Maiberger, Mr. Bishop filed HCSC's motion, including the misrepresentation that Appellees "refused to consent to this motion." In fact and contrary to HCSC's contention, both Methodist Hospitals of Dallas and Texas Health Resources do not oppose the filing of HCSC's *amicus curiae* brief in this appeal.

Respectfully filed this 11th day of June, 2015.

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By: _____ s/ Mikal C. Watts

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the parties registered with the Clerk's Office electronic noticing facilities as listed on the Master Service list, by email, on this 11th day of June, 2015.

s/ Mikal C. Watts

From: Will Maiberger <wmaiberger@wattsquerra.com>
Date: June 4, 2015 11:13:24 AM CDT
To: MBishop@foley.com
Cc: "mcwatts@wattsquerra.com" <mcwatts@wattsquerra.com>, "Joseph V. Gibson (jgibson@jvqlaw.com)" <jgibson@jvqlaw.com>, "JGarlough@foley.com" <JGarlough@foley.com>, "MShippee@foley.com" <MShippee@foley.com>
Subject: **Re: Aetna v. Methodist/HCSC Amicus Brief**

We have conferred with our other client in the Aetna Life case, Texas Health Resources. THR respectfully requests HCSC to consider withdrawing its request. THR views HCSC's request as inconsistent with a party that has resolved a case (THR v. HCSC) and seeks to now move down the road with THR in the already existing business relationship between the parties. The request is also inconsistent with the recognition that THR did not file a motion to reconsider ██████████ in THR v. HCSC ██████████. Please advise if HCSC will withdraw its request and not seek to file an amicus brief.

On Jun 3, 2015, at 3:58 PM, MBishop@foley.com wrote:

Mikal,

HCSC intends to file an amicus brief with the Fifth Circuit in support of Aetna's position in *Aetna Life Ins. Co. v. Methodist Hospitals of Dallas*, No. 15-10210. Pursuant to FRAP 29, we respectfully request your consent to our motion for leave to file an amicus brief.

Please let me know your position on our request.

Best,
M.

Martin J. Bishop

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EXHIBIT

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