

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

HOT SPRINGS NATIONAL PARK HOSPITAL
HOLDINGS, LLC, on behalf of itself and others
similarly situated

PLAINTIFF

v.

NO. 4:09CV00095 JLH

PARTEE FLOORING MILL, LLP; ADVANCED
INSURANCE BROKERAGE OF AMERICA, INC.
a/k/a ADVANCED INSURANCE ADMINISTRATION;
MATT LILE; EMPLOYERS CHOICE HEALTH PLAN;
and JAY BRADFORD, in his capacity as Insurance
Commissioner for the State of Arkansas and as Receiver
for COSMOPOLITAN LIFE INSURANCE COMPANY

DEFENDANTS

ORDER

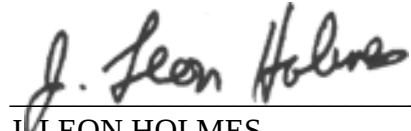
Hot Springs National Park Hospital Holdings, LLC, commenced this action in the Circuit Court of Pulaski County, Arkansas. After the plaintiff filed an amended complaint alleging violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*, and the Employee Retirement Insurance Security Act, 29 U.S.C. § 1001, *et seq.* Matt Lile filed a notice of removal, in which the other defendants joined, removing the action to this Court. Thereafter, Cosmopolitan Life Insurance Company was placed in receivership by the Circuit Court of Pulaski County, and Jay Bradford, the Insurance Commissioner for the State of Arkansas, was appointed as receiver. Bradford has now filed a motion asking the Court to abstain from hearing this action and to remand it to the Circuit Court of Pulaski County.

After reviewing the briefs and the amended complaint with a view toward ruling on the motion to abstain and remand, the Court concluded that prior issues should be resolved before the issue of whether to abstain and remand can be resolved. The amended complaint alleges that the

plaintiff rendered health care services to a participant in a health care plan sponsored by Partee Flooring Mill, LLP. According to the amended complaint, the defendant's coverage for the participant but nevertheless refused to pay for the health care services, after which the participant assigned the right to collect the insurance to the plaintiff. The threshold issue is whether the plaintiff has standing to assert a claim under ERISA or under RICO. If the answer to either of those questions is in the affirmative, the next issue is whether the complaint states a claim upon which relief can be granted either under ERISA or RICO. If the answers to these questions are negative, this Court likely would decline to exercise supplemental jurisdiction over the remaining state-law claims, and so the action would be remanded to the Circuit Court of Pulaski County, Arkansas. If the answer to these questions is in the affirmative, that answer may bear on the issue of whether it would be appropriate to abstain and remand this action.

The Court directs that the defendants submit briefs on these issues before September 21, 2009. The plaintiff's reply brief will be due on or before October 5, 2009.

IT IS SO ORDERED this 3rd day of September, 2009.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE