IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL VAN NOCKER AND MARIA VAN NOCKER, H/W INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF KYLER VAN NOCKER, A MINOR,	:	CIVIL ACTION
PLAINTIFFS,	:	
V.	:	
	:	NO.
HEALTHAMERICA PENNSYLVANIA, INC., HEALTHASSURANCE PENNSYLVANIA, INC., INDIVIDUALLY AND D/B/A HEALTHAMERICA, COVENTRY HEALTH CARE OF PENNSYLVANIA, INC., COVENTRY HEALTHCARE MANAGEMENT CORPORATION, INDIVIDUALLY AND D/B/A HEALTHAMERICA, COVENTRY HEALTH CARE, INC., AND COVENTRY HEALTH AND LIFE INSURANCE COMPANY, INDIVIDUALLY AND D/B/A HEALTHAMERICA,	:	
DEFENDANTS.	:	JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, by and through their attorneys, Caroselli Beachler McTiernan & Conboy, by way of Complaint against the above named Defendants, do hereby aver the following:

JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court due to of the presence of a federal question, 28 U.S.C. § 1331, and the Court's jurisdiction under the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), 29 U.S.C. § 1132.

2. Venue is proper in this judicial district and pursuant to ERISA, 29 U.S.C. § 1332(e)(2) because the breach took place in this district.

3. Venue is also appropriate in this district pursuant to 28 U.S.C. § 1391(b)(2), as a

substantial part of the events or omissions giving rise to Plaintiffs' claims took place in this district.

NATURE OF THE ACTION

4. This action arises under ERISA, 29 U.S.C. §§1001, *et seq.*, and more particularly Sections 1132(a)(1)(B) and 1132 (a)(3) thereof.

5. Specifically, this is a civil action brought against the Defendants listed below for the denial of medical treatment prescribed on behalf Plaintiff, five year old, Kyler Van Nocker, by his physicians for treatment of Neuroblastoma.

PARTIES

6. Plaintiff Paul Van Nocker is an adult individual who is a citizen of the State of New Jersey, residing at 115 East Franklin Ave, Edgewater Park, New Jersey 08010.

7. Plaintiff Maria Van Nocker is an adult individual who is a citizen of the State of New Jersey, residing at 115 East Franklin Ave, Edgewater Park, New Jersey 08010.

8. Minor Plaintiff Kyler Van Nocker is a minor individual who is a citizen of the State of New Jersey, residing at 115 East Franklin Ave, Edgewater Park, New Jersey 08010. Minor Plaintiff's date of birth is November 30, 2004.

9. At all times relevant hereto, Plaintiffs Paul Van Nocker and Maria Van Nocker are the parents and natural guardians of Minor Plaintiff Kyler Van Nocker.

10. Defendant HealthAmerica Pennsylvania, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania as a health care insurance company, with a registered address in care of National Registered Agents, Inc., 600 North Second Street, Harrisburg, Pennsylvania 17101. In addition, HealthAmerica Pennsylvania, Inc., has a principal place of business located at 3721 Tecport Drive, Harrisburg, Pennsylvania 17106.

11. At all times relevant hereto, HealthAmerica Pennsylvania, Inc., was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

12. Defendant HealthAssurance Pennsylvania, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania as a health care insurance company with its principal place of business and registered address located at 3721 Tecport Drive, Harrisburg, Pennsylvania 17106.

13. At all times relevant hereto, HealthAssurance Pennsylvania, Inc., was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

14. Defendant Coventry Health Care of Pennsylvania, Inc., is a corporation organized and existing under the laws of a state other than the Commonwealth of Pennsylvania as a health care insurance company, with a registered address in care of National Registered Agents, Inc., 600 North Second Street, Harrisburg, Pennsylvania 17101. In addition, Coventry Health Care of Pennsylvania, Inc., has a principal place of business located at 3721 Tecport Drive, Harrisburg, Pennsylvania 17106.

15. At all times relevant hereto, Coventry Health Care of Pennsylvania, Inc., was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

16. Upon information and belief, Defendant Coventry Healthcare Management Corporation d/b/a HealthAssurance is a corporation organized and existing under the laws of a state other than the Commonwealth of Pennsylvania as a health care insurance company, with a

registered address in care of National Registered Agents, Inc., 600 North Second Street, Harrisburg, Pennsylvania 17101.

17. Upon information and belief, Coventry Healthcare Management Corporation d/b/a HealthAssurance was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

18. Upon information and belief, Defendant Coventry Health Care, Inc., is a corporation organized and existing under the laws of a state other than the Commonwealth of Pennsylvania as a health care insurance company, with a registered address in care of National Registered Agents, Inc., 600 North Second Street, Harrisburg, Pennsylvania 17101.

19. Upon information and belief, Coventry Health Care, Inc. was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

20. Upon information and belief, Defendant Coventry Health and Life Insurance Company d/b/a HealthAmerica is a corporation organized and existing under the laws of a state other than the Commonwealth of Pennsylvania as a health care insurance company, with a principal place of business of 6705 Rockledge Drive, Suite 900, Bethesda, Maryland 20817.

21. Upon information and belief, Coventry Health and Life Insurance Company d/b/a HealthAmerica was and is an insurance company licensed by the Commonwealth of Pennsylvania Department of Insurance to conduct business as an insurance company in the Commonwealth of Pennsylvania.

22. At all times relevant hereto, Defendants HealthAmerica Pennsylvania, Inc., HealthAssurance Pennsylvania, Inc., Coventry Health Care of Pennsylvania, Inc., Coventry

Healthcare Management Corporation, i/d/b/a HealthAssurance and Coventry Health and Life Insurance Company, i/d/b/a HealthAmerica were and are wholly owned subsidiaries of Defendant Coventry Health Care, Inc., which regularly solicits and sells health care insurance to citizens of the Commonwealth of Pennsylvania and the State of New Jersey under the trade name "HealthAmerica/HealthAssurance." (Defendants are hereinafter collectively referred to as "Coventry").

23. At all times relevant hereto, Coventry through its authorized agents, servants, employees, and/or representatives, regularly solicited and sold health care insurance to citizens of the Commonwealth of Pennsylvania and the State of New Jersey.

24. Coventry regularly conducts and transacts business within this Judicial District. Specifically, Coventry contracts with medical providers in the City and County of Philadelphia so that Coventry's members, beneficiaries, subscribers, and/or other insureds can utilize the services of said Philadelphia County medical providers, including but not limited to, St. Christopher's Hospital ("St. Chris"); physicians employed by St. Chris; The Children's Hospital of Philadelphia ("CHOP"); and physicians employed by CHOP.

25. At all times relevant hereto, Coventry acted through its agents, servants, employees, officers, directors, and/or other representatives, including but not limited to, Kevin O'Brien, John C. Wallendjack, M.D., Suzanne K. Kelley, D.O., and Albert Yenchick, M.D.

26. At all times relevant hereto, Plaintiff Paul Van Nocker was an employee of Deacon Equipment Co.

27. Upon information and belief, Deacon Equipment Co. agreed to provide health care insurance including hospitalization and major medical insurance coverage to Deacon Equipment Co. employees and their dependants. *See* Member Handbook including

HealthAssurance Pennsylvania, Inc,, Employee Certificate of Insurance for HealthAssurance PPO, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "A."

28. Upon information and belief, at all times relevant hereto, Deacon Equipment Co. contracted with Coventry to provide health care insurance coverage and/or administrative services for health insurance to employees of Deacon Equipment Co., their spouses, family members and dependents. Said insurance took the form of a "Preferred Provider Organization" (hereinafter "PPO"). *See* Exhibit "A."

29. Deacon Equipment Co. Employee Health Plan (hereinafter "The Plan") is, at all times relevant hereto, an employee welfare benefit plan established and existing pursuant to ERISA.

30. At all times relevant hereto, Plaintiff Paul Van Nocker was and is a "participant" of The Plan as that term is defined by ERISA, 29 U.S.C. §1002(7).

31. At all times relevant hereto, Plaintiffs Maria Van Nocker and Kyler Van Nocker were and are "beneficiaries" of The Plan as that term is defined by ERISA, 29 U.S.C §1002(8).

32. Coventry, was and is, at all times relevant hereto, the "Administrator" and/or ERISA plan fiduciary of The Plan, as those terms are defined by ERISA, 29 U.S.C. §§1002(16)(A), (21)(A).

33. Upon information and belief, eligibility determination for medical claims submitted by Deacon Equipment Co. employees, their spouses, family members and dependents were made solely by and at the discretion of Coventry.

FACTUAL BACKGROUND

34. Plaintiffs incorporate by reference paragraphs 1 through 33, as though the same were fully set forth at length.

35. At all times relevant hereto, Coventry, issued a policy of insurance for the eligible participants and beneficiaries of The Plan (hereinafter "the Policy") funding, either in whole or in part, The Plan. *See* Exhibit "A."

36. In and around June 2007, Minor Plaintiff began experiencing symptoms of a cold, specifically, a fever. Upon administering Tylenol, Plaintiff Maria Van Nocker felt a lump in Minor Plaintiff's jaw. Plaintiffs contacted their pediatrician, and the pediatrician advised taking some antibiotics and treat it as an ear infection. In the following days, Minor Plaintiff hit is head, and a bump appeared, which did not resolve for several days. Subsequently, Minor Plaintiff was unable to walk.

37. On July 11, 2007, Plaintiffs took Minor Plaintiff to Temple University Hospital where numerous tests were performed, including CT Scans and X-Rays.

38. On July 11, 2007, Minor Plaintiff was diagnosed with stage 4 Neuroblastoma.

39. On July 1, 2007, Minor Plaintiff was transferred to St. Chris where he came under the care of Drs. Halligan and Rozans.

40. The treatment protocol called for six (6) rounds of intensive chemotherapy, Aphaeresis to collect stem cells for use in later bone marrow transplants, surgery to remove the primary tumor, tandem Autologous Stem Cell Transplants, radiation therapy, followed by additional treatments as prescribed by his doctors.

41. Within ten (10) days of being transferred to St. Chris, Minor Plaintiff began chemotherapy.

42. In August 2007, in preparation for his two bone marrow transplants, Minor Plaintiff had a procedure to harvest his stem cells for use at a later date.

43. In and around December 2007, between rounds five and six of the chemotherapy, Minor Plaintiff had major surgery to remove tumors around his kidneys.

44. The last round of chemotherapy was administered in late December 2007.

45. Minor Plaintiff was discharged to home briefly in and around late December 2007.

46. Minor Plaintiff was then admitted to St. Chris to prepare for the initial bone marrow transplant, which was scheduled to take place in mid-January 2008.

47. Prior to the bone marrow transplant surgery, Plaintiffs were advised by Coventry that Minor Plaintiff would be required to undergo the transplant surgery at the CHOP. Coventry advised Plaintiffs that CHOP was a new "center of excellence" for transplants, and therefore, under the terms of the Policy, Minor Plaintiff would have to be moved to CHOP for his scheduled transplants.

48. As a result, and after a two-week delay, Minor Plaintiff was admitted to CHOP for his tandem bone marrow transplants on January 31, 2008.

49. Minor Plaintiff was then discharged to home and returned to CHOP ten (10) days later on March 14, 2008 for his second bone marrow transplant.

50. In April 2008, Minor Plaintiff was diagnosed with Veno occulsive disease. Minor Plaintiff was treated with defibrotide, which was not FDA approved, not manufactured in the United States, and did not have peer reviewed studies at that time, but was the only known drug to treat Veno occlusive disease. Coventry paid for and provided insurance coverage for this treatment.

51. On May 18, 2008, Minor Plaintiff was discharged from CHOP to home.

52. On May 22, 2008, Minor Plaintiff was readmitted to St. Chris as a result of complications secondary to chemotherapy and the bone marrow transplants.

53. Minor Plaintiff was in and out of the Intensive Care Unit for approximately a two-month period between June and July 2008.

54. On August 7, 2008, Minor Plaintiff had one of his kidneys removed.

55. From September through October 2008, Minor Plaintiff was treated with localized radiation on an out-patient basis.

56. On September 19, 2008, Minor Plaintiff was discharged to home.

57. In October 2008, Minor Plaintiff began Acutain Phase II study treatment. Acutain is not FDA approved for treatment of Neuroblastoma and is considered experimental for treatment of Neuroblastoma, however, Coventry paid for and provided insurance coverage for this treatment.

58. By the end of 2008, Minor Plaintiff was at home and recovering well.

59. Every three months, Minor Plaintiff was tested with Metaiodobenzlguanidine (MIBG) Scan, at St. Chris, to monitor if any cancer cells had returned. CHOP also was monitoring the MIBG test results.

60. In end of September 2009, a MIBG scan, along with bone marrow biopsy, revealed a very small cancer spot in Minor Plaintiff. Minor Plaintiff was diagnosed with relapsed, refractory Neuroblastoma.

61. Ten (10) days later, in early October 2009, another MIBG scan was performed and revealed that the cancer had continued to spread.

62. Additionally, another bone marrow biopsy was performed in early October 2009 which confirmed the Minor Plaintiff's diagnosis of relapsed, refractory Neuroblastoma.

63. That same day Minor Plaintiff was once against referred to CHOP.

64. On October 20, 2009, Dr. Grupp, Minor Plaintiff's treating Oncologist, initially planned to treat Minor Plaintiff with alkaline inhibitors, but upon review of an additional MIBG scan which indicated that the cancer had continued to spread, Dr. Grupp advised Plaintiffs that alkaline inhibitors would not work, and Minor Plaintiff needed an unknown number of ^{131}I-MIBG treatments.

65. Dr. Maris, another of Minor Plaintiff's treating Oncologists at CHOP, recommended that Minor Plaintiff be treated with ^{131}I-MIBG, as this was Minor Plaintiff's only treatment option at this point. Dr. Grupp concurred in this recommendation.

66. October 29, 2009, Dr. Maris, requested coverage for ^{131}I-MIBG therapy for Minor Plaintiff. *See* November 2, 2009 letter from Kevin O'Brien, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "B."

67. Dr. John Maris sent a letter to Defendant HealthAmerica regarding the clinical rationale for ^{131}I-MIBG Therapy in the treatment of children and young adults with refractory neuroblastoma. *See* letter of Dr. Maris, a true and correct copy which is attached hereto, made a part hereof, and marked Exhibit "C."

68. On October 29, 2009, the request for coverage for ^{131}I-MIBG therapy in the treatment of children and young adults with refractory neuroblastoma was reviewed and denied by Suzanne K. Kelley, DO, a Coventry Senior Medical Director. *See* Exhibit "B;" s*ee also* November 2, 2009 letter from Suzanne K. Kelley, D.O., a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "D."

69. By letter dated November 2, 2009, Suzanne K. Kelly, D.O., informed Plaintiffs of Coventry's decision to deny coverage for ^{131}I-MIBG. *See* Exhibit "D."

70. Dr. Kelley explained that the request was not approved based on medical information supplied and the definition of Medically Necessary set forth in Article I definitions 1.44 of the summary plan description. The Plan's definition of Medically Necessary is: (vii) not experimental or investigational as determined by HealthAssurance under its Experimental Procedures Determination Policy. *See* Exhibit "D;" *see also* Contract Language, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "E."

71. Further **Article X –10.5 Limitations and Exclusions** of summary plan description expressly excludes coverage for "Any services that are not Medically Necessary" as determined by HealthAmerica. *See* Exhibit "D;" *see also* Exhibit "E."

72. Additionally, **Article X- Limitations and Exclusions 10.11** excludes coverage for:

> Medical, surgical, or other (direct or ancillary) health care services, procedures or supplies, including transplant procedures, which are determined to be experimental or investigational or which are used as a necessary accompaniment to an experimental or investigational procedure.

See Exhibit "D;" *see also* Exhibit "E."

73. In summary, Dr. Kelley noted that

> According to our internal guidelines (Coventry Technology Assessment) states, "Coverage for ^{131}I-MIBG in the treatment of refractory neuroblastoma is considered investigational/experimental because there is inadequate evidence in the peer-reviewed published clinical literature regarding its effectiveness."

See Exhibit "D;" *see also* "Coventry Health Care Technology Assessment for ^{131}I-MIBG in the Treatment of Refractory Neuroblastoma, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "F"

74. Nowhere in the Summary Plan Description does it indicate that "internal guidelines" or "Coventry Technology Assessment" was to be included by reference. Plaintiffs had no knowledge at any time of these "internal guidelines."

75. On October 30, 2009, Dr. Gruppp requested reconsideration of the Coventry denial. *See* Exhibit "B."

76. In response Dr. Grupp's request, Albert Yenchick, M.D., another Coventry Medical Director, stated that the entire record had been reconsidered, in addition to a review of any newly submitted information. Following this review, the original decision to deny was upheld. *See* November 2, 2009 letter from Albert Yenchick, M.D., a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "G."

77. Dr. Yenchick indicated that the decision was based upon:

> According to our internal guidelines (Coventry Technology Assessment) states, "Coverage for ^{131}I-MIBG in the treatment of refractory neuroblastoma is considered investigational/experimental because there is inadequate evidence in the peer-reviewed published clinical literature regarding its effectiveness."

See Exhibit "G."

78. On October 30, 2009, Plaintiff Paul Van Nocker appealed the denial. *See* Exhibit "B."

79. On October 30, 2009, Defendant HealthAmerica sent Minor Plaintiff's appeal file to MCMC, an outside company paid by Coventry to perform medical necessity reviews, for an outside peer review. The reason for the referral was stated as: "Is the requested I-MIBG therapy in the treatment of children and young adults with refractory neuroblastoma

experimental/investigational per Plan language?" The Peer Reviewer reviewed Coventry referral form, and the submitted data. The Peer Reviewer made the following recommendation: the requested I-MIBG therapy is experimental/investigational based upon the Plan language due to lack of clinical data. *See* Peer Review Report, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "H."

80. The peer review report indicates "Per the definition of experimental/investigational:

> (1) MIBG is not FDA approved;
> (2) the use of MIBG requires an investigational new drug review;
> (3) MIBG therapy is being studied in a phase II studies being performed by several pediatric oncology study groups. There are no phase III trials evaluating MIBG therapy published literature to my knowledge;
> (4) Based on my review of the medical literature, there is data in peer review journals to support the efficacy of MIBG to other therapies available to patients with refractory or recurrent neuroblastoma."

See Exhibit "H."

81. Further, the peer reviewer stated: ***"There is medical literature to support the use of this drug for this patient in this clinical setting, but per the Coventry Insurance Policy Plan language the use of MIBG in this setting should be considered experimental/investigational since one or more of the criteria are met."*** *See* Exhibit "H." (emphasis added).

82. On October 30, 2009, the Coventry Complaint Committee convened to review request to authorize coverage of ^{131}I-MIBG therapy in the treatment of children and young adults with refractory Neuroblastoma. *See* Exhibit "B."

83. On November 2, 2009, John Wallendjack, M.D., completed an Appeal Review Form. The appeal decision was once again to uphold the denial. *See* Appeal Review Form, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "I."

84. On November 2, 2009, a letter was sent by Kevin O'Brien, Appeals Manager, to Plaintiffs regarding the results of the committee review. The committee voted to uphold the denial of ^{131}I-MIBG therapy in the treatment of children and young adults with refractory Neuroblastoma. *See* Exhibit "B."

85. The decision to uphold the denial was based on definition of Medically Necessary set forth in Section 1.44 of group's contract; (vii) not experimental or investigational as determined by HealthAssurance under its Experimental Procedures Determination Policy. *See* Exhibit "B;" *see also* Exhibit "E."

86. Further, Section 10.5 of HealthAssurance group contract excludes coverage for "Any services that are not Medically Necessary, as determined by HealthAssurance." *See* Exhibit "B;" *see also* Exhibit "E."

87. Additionally, Mr. O'Brien cites to "Our internal guidelines (Coventry Technology Assessment)" which states:

> "Coverage for ^{131}I-MIBG in the treatment of refractory neuroblastoma is considered investigational/experimental because there is inadequate evidence in the peer-reviewed published clinical literature regarding its effectiveness."

See Exhibit "B;" *see also* Exhibit "F."

88. This letter also indicated that Plaintiffs had exhausted their complaint rights provided by Health Assurance. *See* Exhibit "B."

89. On November 5, 2009, Minor Plaintiff was admitted to CHOP to prepare for the ^{131}I-MIBG treatment for his relapsed, refractory Neuroblastoma.

90. The first ^{131}I-MIBG procedure took place on November 6, 2009.

91. On November 6, 2009, an addendum was made to the Peer Review Report. The reason for the addendum was noted as "Is this treatment supported by the literature, and not

I/E?" The rationale stated that the use of MIBG "is currently investigational/experimental despite some data for its efficacy in metastatic neuroblastoma. Additional studies are needed before the treatment is not considered investigational/experimental." *See* Addendum, a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "J."

92. Minor Plaintiff was discharged to home on November 11, 2009.

93. Minor Plaintiff's second I-MIBG treatment took place exactly 6 weeks later, on December 15, 2009.

94. Minor Plaintiff was discharged to home on December 19, 2009.

95. Minor Plaintiff is scheduled for a MIBG scan in mid-January 2010 to determine the next step in his treatment.

96. It is Dr. Grupp's opinion that ^{131}I-MIBG treatment in children with refractory neuroblastoma is an appropriate and effective treatment with demonstrated value. *See* Grupp affidavit a true and correct copy which is attached hereto, made a part hereof and marked Exhibit "K."

97. Dr. Grupp also opined that ^{131}I-MIBG treatment for patients of Kyler's age suffering from relapsed refractory neuroblastoma is an effective and beneficial treatment, and has been documented to be such in peer reviewed medical literature. *See* Exhibit "K."

98. It is Dr. Grupp's opinion that all physicians who care for patients with neuroblastoma worldwide consider ^{131}I-MIBG as the drug of choice to attempt to achieve a second remission after disease relapse. *See* Exhibit "K."

99. It is Dr. Grupp's opinion that ^{131}I-MIBG treatment for patients with relapsed refractory neuroblastoma is an accepted medical treatment and is neither experimental nor investigational within the clinical meaning of those terms. *See* Exhibit "K."

100. It is Dr. Grupp's opinion that ^{131}I-MIBG treatment for patients with relapsed refractory neuroblastoma is the standard of care in the United States and Europe. *See* Exhibit "K."

101. It is Dr. Grupp's opinion that Kyler Van Nocker is a good candidate for ^{131}I-MIBG treatment at this time. *See* Exhibit "K."

102. It is Dr. Grupp's opinion that if Kyler Van Nocker does not receive the ^{131}I-MIBG treatment at this time, he will lose his the opportunity to receive this treatment in his life time. *See* Exhibit "K."

103. It is Dr. Grupp's opinion that the ^{131}I-MIBG treatment is Kyler Van Nocker's best chance for prolonging his life. *See* Exhibit "K."

104. At all times relevant hereto, the decision of Coventry to deny full health care benefits to Minor Plaintiff under The Plan was arbitrary, capricious and constituted an abuse of discretion or, in the alternative, meets a *de novo* standard of review.

105. At all times relevant hereto, Coventry's denial of benefits to Minor Plaintiff was the result of a biased, self-serving misreading and misinterpretation of the treating physicians' medical records, objective test data, internal reviews, external peer reviews, relevant and controlling Plan documents, other documents and governing law.

106. As a result of the foregoing actions, Coventry has breach its obligations and duties under The Plan, including, but not limited to, its duties as ERISA plan administrators and fiduciaries.

107. Upon information and belief, each ^{131}I-MIBG treatment cost approximately $55,000.

108. Due to Coventry's failure and continual refusal to provide coverage for Minor Plaintiff's ^{131}I-MIBG treatment, Plaintiffs are personally liable for the total cost of all ^{131}I-MIBG treatments to date, amounting to approximately $110,000.00

COUNT I

VIOLATION OF ERISA, 29 U.S.C. § 1132(a)(1)(B)

PLAINTIFFS V. DEFENDANTS

109. Plaintiffs incorporate by reference paragraphs 1 through 108, as though the same were fully set forth at length.

110. ^{131}I-MIBG treatment in children with refractory Neuroblastoma is medically necessary and is not investigational or experimental.

111. Minor Plaintiff is entitled to benefits under The Plan that are Medically Necessary.

112. As a proximate result of the aforementioned actions and inactions of Coventry, its agents, servants and/or employees, Minor Plaintiff has been denied health care benefits to which he is entitled under The Plan in violation of ERISA.

COUNT II

BREACH OF FIDUCIARY DUTY, 29 U.S.C. § 1132(a)(3)

PLAINTIFFS V. DEFENDANTS

113. Plaintiffs incorporate by reference paragraphs 1 through 112, as though the same were fully set forth at length.

114. Coventry has breached its respective fiduciary duties as averred previously and in violation of ERISA, 29 U.S.C. § 1104(a).

COUNT III

VIOLATION OF 29 U.S.C. § 1132(C)(1)(B)

PLAINTIFFS V. DEFENDANTS

115. Plaintiffs incorporate by reference paragraphs 1 through 114, as though the same were fully set forth at length.

116. On December 8, 2009 Plaintiff Paul Van Nocker requested a complete copy of his insurance policy and The Plan from Coventry.

117. Coventry has failed and refused to comply with said request for information which Coventry is required by ERISA 29 U.S.C. § 1132, 29 C.F.R. § 2560.503-1(z)(iii) and 29 C.F.R. § 2560.503-1(g) and applicable regulations to furnish Plaintiffs within thirty (30) days after the request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Paul Van Nocker, Maria Van Nocker and Kyler Van Nocker respectfully request that this Honorable Court grant judgment in their favor and against Defendants and Order the following relief:

(a) An adjudication that Minor Plaintiff is entitled to Health Care Benefits in the total amount of ^{131}I-MIBG treatment, less any payments made by The Plan plus all applicable increases according to The Plan, together with all applicable cost attendant to ^{131}I-MIBG treatment and interest.

(b) The entry of injunctive, restitution and/or other equitable relief enjoining Defendants from violating material terms and conditions of The Plan, as averred hereinabove, as well as violating the material representations contained in The Plan documents;

(c) An award to Plaintiffs of their attorneys' fees and costs of this litigation; and

(d) Such other relief as this Court deems appropriate.

CAROSELLI BEACHLER
MCTIERNAN & CONBOY

By: _____
DAVID S. SENOFF, ESQUIRE
LAUREN C. FANTINI, ESQUIRE
1500 WALNUT STREET, SUITE 507
PHILADELPHIA, PA 19103
T: 215-609-1350
F: 215-609-1351

Attorneys for Plaintiffs
Paul Van Nocker
Maria Van Nocker and
Kyler Van Nocker

Date: February 9, 2010