Long Do

From: Rosen, Andrea [RosenA@insurance.ca.gov]
Sent: Monday, June 18, 2007 1:03 PM
To: Catherine Hanson
Subject: RE: United/ RICO suit
Attachments: Rosen, Andrea.vcf

Hi Catherine- we haven't spoken recently. I understand that you are moving to AMA but not til July . If you are still working (though I understand that this would be a good time to take a long vacation), can you give me call? I'm curious what you think of this win by United.

We are conducting a market conduct exam of Pacificare/ United right now- and partly as a result of your teachings and influence, I have gotten the CDI to expand their scope to cover other parts of the insurance code.. and other conduct, heretofore not previously examined.

I'm wondering if this settlement would affect our exam in any way. I don't think it would, but would value your opinion.

Thanks- my direct line is 4923508.

National Underwriter: UnitedHealth Wins Battle In Managed Care Suit
BY ALLISON BELL
NU Online News Service, June 18, 2007, 10:25 a.m. EDT

A managed care company has taken a step toward beating back a class-action lawsuit.

A 3-judge panel of the 11th U.S. Circuit Court of Appeals has issued a 2-sentence opinion upholding a lower-court ruling in favor of UnitedHealth Group Inc., Minnetonka, Minn., and against the plaintiffs, a class representing doctors who had treated UnitedHealth managed care plan patients.

The courts consolidated the UnitedHealth case with a wave of other managed care suits in Miami under U.S. District Court Judge Federico Moreno. Lawyers for the plaintiffs in the cases accused UnitedHealth and the other managed care companies of conspiring to hold down doctors' compensation.

The other major defendants in the litigation have negotiated settlements. The settlements call for the companies to pay tens of millions of dollars into settlement funds and to change the way they work with doctors.

But Moreno dismissed all claims in the case against UnitedHealth in June 2006, and the new 11th Circuit ruling has upheld that decision.

"The judgment of the district court is affirmed for the reasons set out in the district court's order granting summary judgment," the court writes in the brief opinion explaining its ruling.

The 11th Circuit does not conduct the same analysis of how the "plus factors" provision of antitrust law applies to Racketeering Influenced and Corrupt Organization cases, but, "even if that requirement is not applicable, the district court's judgment is still due to be affirmed under the facts and circumstances of this case," the court writes.

The 11th Circuit appellate court has jurisdiction over Alabama, Florida and Georgia.

At press time, the defendants were not immediately available to comment, and it was not clear whether the plaintiffs would appeal the 11th Circuit ruling.

If the ruling stands, and UnitedHealth does not negotiate the kind of settlement agreement its competitors have negotiated, the company will not be subject to the kinds of settlement agreement provisions that will regulate many

competitors' dealings with physicians. Typical managed care litigation settlement agreement provisions require that competitors publish detailed contract and pricing information on their physician Web sites.

"We are pleased that this decision puts the Shane vs. Humana class action claims behind us," Thomas Strickland, UnitedHealth's chief legal officer, says in a statement about the 11th Circuit ruling. "This ruling affirms the Southern District Court of Florida's finding in support of our position that there was no evidence of improper conduct by UnitedHealth Group."

The company "looks forward to continuing to work collegially with physicians and their professional organizations to improve the quality of care delivery and to simplify health care administration," Strickland says.

Andrea Rosen

Staff Counsel

Health Enforcement Bureau

California Department of Insurance

(916) 492-3508 phone

(916) 322-7294 fax

rosena@insurance.ca.gov

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-----Original Message-----
From: Catherine Hanson [mailto:chanson@cmanet.org]
Sent: Saturday, March 31, 2007 12:00 PM
To: Rosen, Andrea
Subject: RE: silent PPO law (CIC 10178.3) and CIC 790.03 Unfair Practices, Prohibited acts

Hi Andrea. I certainly agree with you that there are sections that the Insurance Commissioner can only enforce against insurers for specified insurance lines, as well as the fact that after Moradi only the Insurance Commissioner has jurisdiction to enforce 790.03 claims (or at least most of those claims). But there are many provisions that I believe apply to UnitedHealth regardless of whether it is an insured product. I have to go give a speech on managed care contracting now but I will get you something more specific tomorrow.

You really should talk with the Nebraska DOI about their United enforcement actions. The lead attorney there appears to be Martin Swanson, 402-471-2201. You can pull down the complaint I referred to off their website. Thanks, Catherine

From: Rosen, Andrea [mailto:RosenA@insurance.ca.gov]
Sent: Friday, March 30, 2007 5:30 PM
To: Catherine Hanson
Subject: silent PPO law (CIC 10178.3) and CIC 790.03 Unfair Practices, Prohibited acts

Catherine

Do you believe that these above sections of the Insurance Code could be applied to provider networks (silent PPO) or claims 790.03 paid under the benefits of a self- insured plan where NO insurance policy whatsoever (e.g. no reinsurance even) was in place? 790.03 cannot be stated as a private cause of action anymore (moradi)

I found Graves v. Blue Cross and have been reading through your CPLH and it's still not very clear to me.

Many of the insurance codes such as 10123.13 start with language like" Every insurer issuing group or individual policies of health insurance ... shall reimburse claims.. for those expenses .. no later than 30 working days after receipt..."

hard to argue that it does not apply to claims being paid pursuant to an insurance policy, don't you think?

inotherwords, understandably, many of the CIC sections reference the authority of the code section back to the underlying insurance contract(policy) since that's the basis for the benefit, the bargain, etc... makes it hard to argue that WITHOUT that insurance policy, the code section requirements apply to self- funded health plans (for example clearly the state mandates for specific types of coverage apply to insurance policies only and not to self-funded plans which have the erisa preemption)

bear with me- I'm still trying to sort this out. I've read alot on erisa preemption this week and it's a wild area.

Andrea Rosen

Staff Counsel

Health Enforcement Bureau

California Department of Insurance

(916) 492-3508 phone

(916) 324-1883 fax

rosena@insurance.ca.gov