

# **Litigation Between Physicians and Insurance Carriers - 2006**

## **Update**

**By:**

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The conflict between physicians who desire to be fairly compensated for their services and insurance companies which desire to keep payment as low as possible to control costs occasionally has resulted in lawsuits concerning the amount or timeliness of reimbursement. There are two recent court decisions that involve these important issues.

In 2002, a class action anti-trust suit was filed in Cincinnati by the Academy of Medicine of Cincinnati, the Butler County Medical Society and a number of individual physicians claiming that Aetna, United Health Care of Ohio and a number of other large insurance carriers in the region were engaged in a conspiracy to maintain artificially low reimbursement rates paid to physicians in violation of the anti-trust provisions of Ohio law. The insurance companies had argued that the provider agreements with physicians contained an arbitration clause and because of that clause the case should be submitted to binding arbitration as opposed to potential trial with a jury. The issue before the Supreme Court was whether the arbitration clauses were applicable to anti-trust claims. The Court of Appeals had concluded that the arbitration clause did not apply and that the physicians were entitled to proceed to trial on these matters. After reviewing the case law both under Ohio and federal law regarding arbitration, the Supreme Court upheld the decision of the Court of Appeals finding that the issues could proceed to trial in the state court. *See Academy of Medicine of Cincinnati v. Aetna Health, Inc., 108 Ohio St.3d 185 (2006)*

In a second case, a group of gynecologists in Michigan brought a class action in federal court against Blue Cross alleging that Blue Cross had violated the Racketeering Influenced Corrupt Organizations Act (“RICO”) by engaging in a scheme to systematically deny proper reimbursement to physicians serving Blue Cross participants. Blue Cross had argued both before the Trial Court and the Court of Appeals, that RICO should not be applicable to Blue Cross because it was involved in the business of insurance which was regulated by state law. The Sixth Circuit Court of Appeals in Cincinnati upheld the position advanced by the physicians that the allegations of wrongful conduct within Blue Cross to deny physician compensation was not something covered by the insurance statutes and that the physicians could pursue the RICO claim against the carrier. *See Genord v. Blue Cross and Blue Shield of Michigan, Case No.: 04-2486 (6<sup>th</sup> Cir. March 14, 2006).*

The significance of these two decisions is that in both cases, the claims presented by the physician groups were brought under statutes, that if successful, would permit the physicians to not only recover their damages, but to also receive a penalty equal to three times the damages and to recover attorneys fees. In both cases, the motions by the

insurance companies to attack the claims were efforts to prevent the issues being considered by a jury and potentially consider whether punitive damages should be awarded against the carriers.

These two cases reflect a growing amount of litigation where physician groups and organized medicine are taking aggressive action to attack or challenge decisions by dominant health care plans which may serve to unreasonably reduce otherwise appropriate compensation for services rendered to insured patients.

If you would like copies of either of these decisions or have any questions concerning this or other health care issues, please contact Scott P. Sandrock at 1-877-902-8145 or email at [spsandrock@bmdllc.com](mailto:spsandrock@bmdllc.com).