

May 9, 2005

## TWO MORE INSURERS SETTLE IN MULTIDISTRICT CLASS ACTION

**Case name:** Klay v. Humana Inc., converted to Managed Care Litigation

**Case no.:** 00-1334-MD-Moreno

**Court:** U.S. District Court, Miami

**Description:** Class action

**Filing date:** May 1, 2000

**Settlement date:** May 6, 2005 (first amended complaint)

**Judge:** Federico A. Moreno

**Plaintiff attorneys:** A total of 11 firms. Co-lead counsel is Harley Tropin, a partner at Kozyak Tropin & Throckmorton, Coral Gables.

**Defense attorneys:** A total of 32 law firms. Co-lead counsel is Edward Soto of Weil Gotshal & Manges, Miami.

**Details:** The suit began in 1999, when lawyers around the country filed suit under the Racketeer Influenced and Corrupt Organizations Act on behalf of several medical organizations. At the same time, other suits were being filed on behalf of individual physicians and patients around the country alleging that eight major insurers had improperly rejected patients' claims and had developed software to automatically reduce the rates of reimbursement for the doctors' claims for treating insured patients.

The suits were combined before Judge Moreno in Miami in 2000, coordinated as multidistrict litigation. Moreno certified the case as a class action in September 2002, creating a class of more than 600,000 doctors. He denied class certification for the 145 million patients.

The insurers appealed Moreno's decision to certify the doctors as a class. Before the 11th U.S. Circuit Court of Appeals ruled, Aetna and Cigna, two of the health insurers, settled with the physicians for a total of \$310 million. In 2004, the 11th Circuit left the class certification intact on the claims of racketeering while throwing out the class certification for other claims by the physicians, including breach of con-

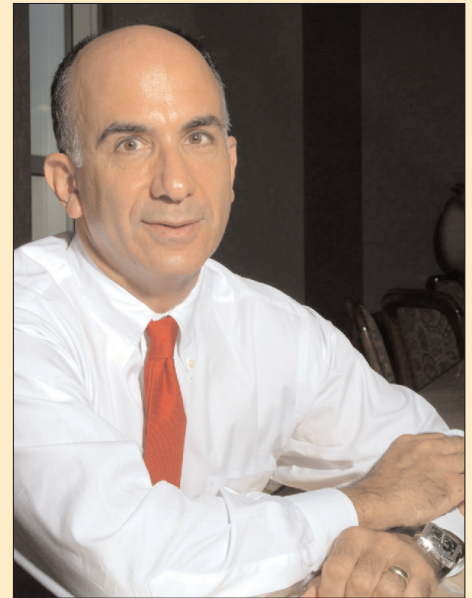
tract.

In 2002, Moreno granted an injunction against compelling the plaintiffs to arbitrate their claims. The insurers' contracts with the physicians contained arbitration clauses, and the insurers had wanted to arbitrate each claim. Again, the insurers appealed, and the 11th Circuit reversed Moreno's decision. While the doctors would not be forced to submit their claims to arbitration, the judge could not forbid the parties from doing so.

The plaintiffs then filed an amended complaint designed to clarify the claims they maintained were not subject to arbitration. In November 2004, the 11th Circuit ruled that arbitration was not mandatory. In January of this year, the U.S. Supreme Court, acting on an appeal from the insurers, refused to throw out Judge Moreno's ruling to grant certification to the physicians.

**Plaintiffs' case:** The doctors allege that the insurers colluded to systematically underpay physicians' claims, from office visits to surgeries, to delay payment or to deny payment without basis in violation of health care contracts with both patients and physicians. Key to the plaintiffs' strategy was to obtain class status to avoid what they said would be essentially the same litigation with the same insurers time after time in state courts around the nation.

**Defendants' case:** The insurers deny that the doctors have been underpaid or improperly denied payment and deny that any conspiracy to engage in such action exists between the various insurance companies. They also argued that a class action was improper because of the variety of circumstances of the plaintiffs in the individual cases. Moreover, they argued, each case would be more properly disposed of through arbitration between the insurers and the individual physicians.



Harley Tropin is co-lead counsel for the plaintiffs.

**Outcome to date:** This month, two of the remaining health insurers, Health Net and Prudential Insurance Company of America, settled for a combined \$80 million. Judge Moreno gave the settlement preliminary approval last Friday.

Remaining as defendants in the suit, which is scheduled to go to trial this fall, are Humana, PacifiCare Health Systems, UnitedHealth Group and WellPoint Health Networks. Two other large health care companies, Anthem and Coventry Health Care, were added as defendants after the case was certified as a class action.

With four of the defendants now having settled, the case continues to move toward trial before Judge Moreno. The parties currently are engaged in court-ordered mediation. Soto, the co-lead counsel for the insurers, did not return a call for comment.

Tropin, co-lead counsel for the physicians, said, "We're just moving toward trial in November." ♦

—Dan Lynch