Justices Urged To Review Docs' Claims Barred By Fla. Deal

Law360, New York (November 17, 2014, 1:44 PM ET) -- Several doctors’ associations and doctors accusing WellPoint Inc. of conspiring to cap insurance reimbursements have told the high court that a Tenth Circuit decision barring them from pursuing claims in California because of an earlier Florida settlement creates a prospective waiver that flies in the face of antitrust law.

The California Medical Association and others on Thursday asked the U.S. Supreme Court to take up their case because the appeals court’s June ruling — barring them from pursuing their antitrust and Racketeer Influenced and Corrupt Organizations Act claims in California because of a settlement involving similar claims in Florida — deprives them of the ability to challenge ongoing anti-competitive behavior that occurred after a settlement. They also said in their petition for a writ of certiorari that the appeals court’s decision has created a landscape of widespread uncertainty and confusion.

“The [decision] strips nearly one million physicians of their federal rights to challenge the continuing anti-competitive practices of many of the nation’s largest health insurers in perpetuity, as many of those insurers have entered into settlements substantially similar to WellPoint’s,” the petition says. “Moreover, the decision injects uncertainty into countless other antitrust settlements that contain releases similar to the one the Eleventh Circuit considered here...”

The petition stems from the appeals court’s June 18 split ruling affirming part of a district court’s decision that resulted in sanctions for three doctors and three doctors’ associations for refusing to withdraw claims that WellPoint cheated them out of reimbursement payments, agreeing with the lower court that the doctors’ antitrust and racketeering claims were barred by a settlement in a Florida multidistrict litigation.

The California litigation, filed in July 2010, alleged that the insurers knowingly created and used flawed data to record “usual, customary and reasonable,” or UCR, reimbursement rates for out-of-network health services, beginning in 2006.

The plaintiffs asked the court to rule that WellPoint’s 2005 settlement in the Florida MDL didn’t bar a 2009 MDL targeting the insurer and several others over similar claims in California. Wellpoint’s conduct occurred after the final approval and effective date of the its Florida settlement, meaning their claims weren’t barred, according to the plaintiffs' Florida complaint.

U.S. District Judge Federico A. Moreno disagreed, ruling the claims should be barred and sanctioned the plaintiffs who didn't drop those claims. The American Medical Association and the North Carolina Medical Society dismissed their claims, but the rest remained.
In the split decision, the appellate panel determined that the doctors’ claims under RICO and antitrust claims were barred by the settlement agreement in the Florida MDL, In re: Managed Care., and that, therefore, Judge Moreno didn’t abuse the court’s discretion in finding the doctors should pay sanctions for those claims.

Ultimately, the panel vacated the district court’s judgment barring the doctors’ Employee Retirement Income Security Act claims that arose out of underpayments or denials of benefits after the settlement agreement’s effective date, and vacated the sanctions insofar as some of the claims may now not be included in their calculation, according to the decision.

The appellate panel ruled that the doctors could have filed a motion in the district court to enforce the Florida settlement agreement and the corresponding approval order.

On Thursday, the doctors said the Tenth Circuit defied 50 years of clear high-court precedent and the rulings of the Third, Fifth, Sixth and Eighth Circuits by finding that the settlement released claims based on “new, overt acts within an ongoing conspiracy.”

In the high court’s 1955 decision in Lawlor v. National Screen Service Corp., and clarified in subsequent rulings, the justices held that a judgment following the settlement of an antitrust suit did not bar claims for acts the defendants committed after the judgment was entered, “Even if they committed those acts in furtherance of the same conspiracy alleged in the previous suit,” the petition says.

The four circuits likewise found that ruling otherwise would violate antitrust laws and public policy, the petition says.

The doctors also argued that the appellate panel's majority decision opens the door to new abuses in class actions because it permits counsel to design settlement agreements that eliminate absent class members’ rights to challenge ongoing conspiracies without compensating those members or notifying them of the broad release.

A WellPoint representative was not immediately available on Monday for comment.


WellPoint is represented by Craig A. Hoover, Peter R. Bisio, E. Desmond Hogan and Mary Helen Wimberly of Hogan Lovells.

The case is Medical Association of Georgia et al. v. WellPoint Inc., case number 14-554, in the
Supreme Court of the United States.

--Additional reporting by Kate Greene. Editing by Rebecca Flanagan.

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