



## Don Haviland's 80 year old client rebukes behemoth insurance company Anthem over 18 cents.

### Anthem Seeks To Shed Remaining Claims In Rates MDL

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Law360, Los Angeles (March 7, 2016, 9:15 PM ET) -- Anthem Inc. asked a California federal court Friday to toss remaining claims in multidistrict litigation over the insurer's use of allegedly distorted reimbursement rates for out-of-network services, arguing that after multiple dismissals and exits by all but three subscribers, "very little of this case remains."

The health insurer, which changed its corporate name from [Wellpoint Inc.](#) to Anthem in December 2014, pointed out in its motion for summary judgment Friday that almost all of the claims in a fourth amended complaint have been dismissed with prejudice, that class certification was denied, and that most of the original 22 plaintiffs in the litigation voluntarily dismissed their remaining claims with prejudice.

"After multiple amended complaints, multiple rounds of motion to dismiss briefing, and the completion of fact discovery, expert discovery and class certification briefing, very little of this case remains," Anthem said in its motion, adding that the remaining three plaintiffs — Mary Cooper and Darryl and Valerie Samsell — are seeking less than \$500 total with respect to their claims.

Anthem's motion is an attempt to shed the remaining claims in an MDL that accused Anthem and other insurers of knowingly creating and using flawed data from the now-discontinued Ingenix database — used by major health companies to set reimbursement rates for out-of-network medical expenses — as a basis to set "usual, customary and reasonable," or UCR, reimbursement rates since 2006.

The plaintiffs in the MDL, consisting of health care providers, subscribers and medical associations, said the reduced reimbursement rates resulted in higher out-of-pocket expenses for subscribers.

U.S. District Judge Philip S. Gutierrez dismissed most of the claims from a fourth amended complaint on July 19, 2013, leaving only certain claims by Cooper and others under the Employee Retirement Income Security Act, certain state law claims, and the Samsells' claim for breach of the implied covenant of good faith and fair dealing under Virginia law.

The judge **denied the plaintiffs' motion for class certification** on Sept. 3, 2014, saying they hadn't satisfied the commonality requirement. Two months later, the Ninth Circuit denied a petition for an interlocutory appeal of the court's class certification decision, according to court papers.

The remaining claims of Darryl and Valerie Samsell arise from a dispute over reimbursement for out-of-network claims for oral surgery their daughter received in July 2004 and May 2005 under their Anthem Virginia health care policy, the damages for which, according to Anthem's motion for summary judgment, is \$312.53 before prejudgment interest.

Anthem argued Friday that the Samsells lack "reliable, admissible evidence of injury and damages" and that their breach of implied duty of good faith and fair dealing claim fails because Anthem Virginia reimbursed them based on the express terms of their plan contract that purportedly required Anthem Virginia to use a standard in-network rate to calculate the charge.

Meanwhile, remaining plaintiff Mary Cooper claims that Anthem didn't pay its full 70 percent reimbursement share under a New Jersey policy when Cooper's late husband, Robert, received out-of-network cancer treatment services between 2006 and early 2007.

Cooper says that as a result, providers billed her higher balances than she otherwise would have been billed.

Anthem argued Friday that Cooper lacks standing to bring her ERISA claim, that she failed to exhaust her administrative remedies prior to filing suit and that she hasn't demonstrated that appealing the adverse benefits determinations on her out-of-network claims would have been futile.

A deposition Cooper gave to Anthem's attorneys over the 18 cents the insurer purportedly failed to reimburse for an out-of-network claim of \$144.18 highlights the frustrations at play in the dispute.

"You know, when I look at this I want to scream," Cooper said, according to a deposition transcript. "Isn't this ridiculous? Really. 18 cents they don't pay? Is it worth all the damn paperwork that they went through?"

Cooper filed her own motion for partial summary judgment on Friday, seeking a ruling that Anthem violated ERISA. Her attorney Donald Haviland Jr. of [Haviland Hughes](#) told Law360 on Monday that the relatively nominal amount at issue in the remaining claims is not important.

"The claims of the New Jersey plaintiffs, Mrs. Cooper, and Mr. and Mrs. Samsell, remain meritorious, as they have since they were filed in 2009," he said. "Whether those claims are for \$0.18 or \$500, right is right, and wrong is wrong."

Representatives for Anthem didn't immediately return a request for comment on Monday.

The attorney for the plaintiffs is Donald E. Haviland Jr. of Haviland Hughes.

The attorneys for the defendants are Michael M. Maddigan, Craig A. Hoover, E. Desmond Hogan, Peter R. Bisio and Miranda L. Berge of [Hogan Lovells US LLP](#).

The case is In re WellPoint, Inc. Out-of-Network "UCR" Rates Litigation, case number [2:09-ml-02074](#), in the United States District Court for the Central District of California.

--Additional reporting by David McAfee. Editing by Philip Shea.