

New Jersey Law Journal

STATEWIDE LEGAL AUTHORITY SINCE 1878

VOL. CXC NO. 12

MONDAY, DECEMBER 17, 2007

njlj.com ALM



MOUNTAIN OUT OF MOLAR? Eric Katz usually has sums larger than \$462 in mind when he sues Horizon Blue Cross.

Fearing Class Action, Carrier Removes Lawyer's Dental-Bill Suit to U.S. Court

By Henry Gottlieb

A New Jersey lawyer who won a \$45 million class action settlement last year from Horizon Blue Cross is suing the carrier in small claims court for not paying his \$462 dental bill.

And the carrier, saying it fears the suit may be a prelude to another class action, has hired McCarter & English, the state's largest firm, to make a federal case out of it.

A dentist charged Eric Katz \$600 to fill a decayed tooth with composition bonding, but Horizon Blue Cross told him his coverage under his ex-wife's family policy permitted reimbursement for an inexpensive silver filling only. The carrier pegged the benefit at \$138, leaving the rest of the bill to Katz.

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Katz appealed to the carrier, armed with a statement from dentist Fred Teschemacher that bonding was required because Katz's teeth were "severely eroded."

Teschemacher also wrote that dentists have reduced their use of silver fillings — metal amalgams that include mercury — "due to concerns about mercury exposure." New Jersey has strict rules on amalgam disposal because of the mercury.

The American Dental Association, the Food and Drug Administration and the U.S. Public Health Service say amalgams are safe for patients, but Katz says his dentist's concern adds weight to his demand for more coverage.

In October, when he received no satisfaction, Katz sued the carrier in Special Civil Court in Essex County.

Katz usually has larger sums in mind when he sues Horizon Blue Cross. In an October 2006 settlement of a class action suit on behalf of the state's doctors, a judge approved a package of billing and claims processing reforms worth \$39 million to the class.

On top of that, Horizon Blue Cross paid \$6.5 million in legal fees to Katz's firm, Mazie Slater Katz & Freeman in Roseland.

He represents dentists in a similar class action against Horizon Blue Cross

and is seeking class certification for patients with eating disorders who allege the carrier denied legitimate claims. He also represents individuals in benefit-denial cases.

Given Katz's history, it's not surprising that the insurance company is making a mountain out of a molar.

The company hired McCarter & English partner Andrew Bunn. On Dec. 6, he filed a removal petition in federal court, which has jurisdiction over benefits cases of any size under the Employee Retirement Insurance Security Act. The law also gives federal judges the power to send such matters back to state court.

Thomas Rubino, a spokesman for Horizon Blue Cross, says the suit is "a little crazy."

"Katz is just forum shopping to develop more class actions," Rubino says. "It has to be seen in that context because he has filed a lot of class action lawsuits."

He says the federal court is a better forum for the company than state court, but declines to say how much the company is paying McCarter & English to defend a case worth \$462.

Katz denies he had anything more than a small claims court matter on his mind when he filed the suit.

But he says that at his firm, "we've now had some internal discussions here about whether we should take a closer look at this particular issue. I have no idea how many people are impacted by this."

He says his case can't morph into a class action because a lawyer representing a class can't be a member of the class.

He says he sued rather than do what a typical patient would do — complain, shrug and pay — because suing is easy for a lawyer, especially a lawyer with his experience.

"This sort of thing goes on hundreds if not thousands of times a day," he says. "Horizon receives between 4,600 and 4,700 dental claims a day. Most people are not lawyers, of course, and what lawyer would ever take a \$500 case?"

"The issue here, more than anything, is that Horizon apparently is so afraid of me that they hired McCarter & English," he says.

A lawyer outside the case, Keith McMurdy, a corporate benefits lawyer at Fox Rothschild in New York, suggests a company in Horizon Blue Cross' position would have a reason to petition for removal.

"If it was a \$400 claim and that was the only exposure associated with it, I might say to the client, a state court judge is competent to hear it," he says.

"But the other side is if you've got thousands of claims out there and you're doing it over and over and if you feel

someone is trying to challenge your mechanism and you need to define your mechanism, what you are going to do is fight in federal court," McMurdy says.

The final question is, why would Katz, whose lawsuits have alleged that Horizon Blue Cross mistreats doctors and patients, continue to be covered by the company, under COBRA, from his ex-wife's policy?

The answer: His firm doesn't pay his dental coverage, he says. ■