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 $662 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.

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 4,000 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, says a company in Horizon Blue Cross' position would have a reason to proceed cautiously.

"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 file a suit in federal court," McMurdy says.

The final question is, why would Katz, whose lawyers have alleged Horizon Blue Cross misapplies doctors' and patients' benefits, 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.