

## Oxford Health Fails To Thwart Doctors' Class Action

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*Monday, March 05, 2007* --- An appeals court has denied Oxford Health Plans LLC's attempt to overturn a district court ruling allowing a group of doctors to proceed with a class action against the insurer.

The Third Circuit Court of Appeals said on Feb. 28 that the arbitrator who made the initial class action determination had the authority to make the decision and did so rationally. The ruling affirmed a previous one by the U.S. District Court of New Jersey.

The case started in April 2002, when John Sutter, a New Jersey pediatrician, instigated class actions against five health insurers—Oxford, Cigna HealthCare, Horizon Blue Cross Blue Shield, HealthNet and United Healthcare.

Sutter accused the providers of responding to payment claims late and combining the procedures covered in order to cut down on reimbursements, said Eric Katz, Sutter's attorney.

The cases were eventually severed. In its case, Oxford argued that according to Sutter's contract, the lawsuit should be disputed in arbitration rather than in the New Jersey Supreme Court, where it was originally filed, Katz said.

In their contract, Oxford and Sutter had agreed that, instead of following the Federal Arbitration Act's standards for vacating a ruling, they would go by those set by the American Arbitration Association, the appeals court's opinion said.

The arbitrator, William Barrett, made the class determination award in March 2005.

In arguing to reverse the appeals court's decision, Oxford pointed to the arbitration association's rules on class actions, which include a 30-day window for judicial review when class status is awarded. The rules, Oxford claimed, imply that there should be a review of whether the right legal standards were used any time the class status is approved.

"Oxford's argument is not persuasive," the court said. "While the AAA rules call for judicial review, they never specify what standard of review the courts should use. Considering the silence of the AAA rules on this issue, we are unable to conclude that the parties manifested a clear intent to opt out of the

FAA rules.”

An attorney for Oxford did not return a phone call on Monday seeking comment.

Katz said the case was moving forward and was in the merits discovery stage.

“I thought it was the correct decision, he said. “It basically says that an arbitrator’s decision is going to be upheld as long as it’s not made capriciously, and as long as he shows he reached decision through proper legal analysis.”

In the case, the doctors accuse Oxford of violating New Jersey’s Prompt Payment Law, which gives an insurance provider a limited timeframe in which to respond to a doctor’s claim. If the deadline expires, the provider either waives the right to deny the claim, or has to pay interest on the payment. The doctors also believe Oxford underpaid them, Katz said.

Horizon, meanwhile, agreed in February to settle the doctors’ case for \$39 million.

The doctors’ cases against Cigna, HealthNet and United Healthcare were funneled into a national multidistrict litigation in a Florida district court.

Sutter is represented by attorneys at Mazie, Slater, Katz & Freeman LLC.

Oxford is represented by Sullivan & Cromwell LLP.

The case is John Ivan Sutter v. Oxford Health Plans LLC, case number 05-5223, in the U.S. Court of Appeals for the Third Circuit.