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CLASS ACTIONS PROTECT PATIENTS AND HEALTH CARE PROVIDERS

The following are examples of recent class action settlements won by patients, employees and health care providers, all of whom have suffered at the hands of an unscrupulous health care industry. They are all contained in CJ&D's extensive class action compilation, *First Class Relief*.¹ They illustrate just how critical class actions are and what is at risk by the increasing use of forced arbitration clauses and class action bans in health care contracts.

PROVIDER REIMBURSEMENT

Sutter v. Horizon Blue Cross Blue Shield of New Jersey, (2007), Case No. ESX-L-3585-02 (Super. Ct. N.J.)

Horizon Blue Cross Blue Shield of New Jersey settled with a class of health care providers over Horizon's alleged "repeated, improper, unfair and deceptive acts and practices designed to delay, deny, impede and reduce compensation to the providers."² The settlement provided for business changes to Horizon, valued at approximately \$39 million, including changes to its fee schedule availability, disclosure of claim edits that result in reduced or denied compensation and improved provider relations, among others.³

NURSING HOMES

Lavender v. Skilled Healthcare Group, (2010), Case No. DR060264 (Super. Ct. Cal.)

Skilled Healthcare Group settled with a class of approximately 32,000 current and former residents of Skilled Healthcare LLC health and rehabilitation facilities, including family members of residents, who sued Skilled Healthcare Group for understaffing in their facilities in violation of California state law. The settlement of \$50 million also included injunctive relief valued at approximately \$12.8 million, requiring Skilled Healthcare Group to staff their facilities to meet state-mandated minimum requirements.⁴

INVASION OF PRIVACY

Bouchard v. Optometrix, (2011), Case No. BC416146 (Super. Ct. Cal.)

Optometrix and related companies and individuals settled with a class of customers and employees who were recorded or monitored in examination rooms, violating their privacy and creating emotional distress, among other things. The defendants paid \$899,565 in settlement funds, divided among eligible class members depending on if they were customers or employees, and whether or not they were recorded in the exam rooms or only monitored.⁵

MANUFACTURER ANTITRUST

In Re: Hypodermic Products Direct Purchaser Antitrust Litigation, (2009), Case No. 2:05-CV-01602-JLL-MAH (D. N.J.)

Becton, Dickinson and Company (“BD”) settled with a class of about 1,600 members for violating antitrust laws (*e.g.*, bundling goods, exclusionary contracts) while selling BD Hypodermic Products, including needles and syringes, blood collection devices, IV catheters and insulin delivery devices.⁶ The class alleged they were forced to pay inflated prices for products as a result of these anticompetitive practices. BD settled for \$45 million, to be distributed *pro rata* to eligible class members.⁷

Spartanburg Regional Health Services Inc., et al. v. Hillenbrand Industries Inc., (2006), Case No. 03-2141 (D.S.C.)

Hillenbrand Industries Inc., Hill-Rom Inc. and Hill-Rom Co. Inc. (“Hillenbrand”), “the nation’s largest manufacturer of caskets and hospital beds,”⁸ settled with a class of buyers or renters of hospital beds and in-room products, for antitrust violations (a bundled pricing scheme) in an attempt to monopolize the sales of specialty hospital beds. Hillenbrand charged supra-competitive prices and provided discounts only if the buyers agreed to buy its specialty hospital beds. Hillenbrand agreed to pay \$316 million to be distributed to eligible class members.⁹

DENIAL OF BENEFITS

Johns v. Blue Cross Blue Shield of Michigan, (2009), Case No. 08-12272 (E.D. Mich.)

Blue Cross Blue Shield settled with a class of Michigan families for failing to cover established Applied Behavioral Therapy for autism, calling it “experimental.” Blue Cross Blue Shield agreed to “reimburse all class members” who paid for this therapy, including the families of at least 100 children.¹⁰

Health Net Class Action Litigation, Renee McCoy, on behalf of herself and others similarly situated v. Health Net Inc., (2008), Case No. 05-0301 (D. N.J.)

Health Net settled three consolidated class actions for providing inadequate reimbursement to members for in-network and out-of-network services by using Ingenix databases and other similar methods that were out of date and inaccurate, thereby lowering company costs and increasing company profits. “After seven years of ‘extraordinarily contentious’ litigation,”¹¹ the Court approved a settlement whereby Health Net would pay \$175 million. In addition, Health Net would provide changes to its business practices, with an estimated value “between \$26 million and \$38 million,”¹² including reforming the database system.¹³

DeVito, et al. v. Aetna Inc., (2008), Case No. 2:07-cv-00418-FSH-PS (D.N.J.)

Aetna settled with a class of persons covered under its health insurance policies and its N.J. affiliates over Aetna’s practice of setting limitations on payments and denial/reduction of coverage for the treatment of patients with eating disorders. The parties settled for \$250,000, and Aetna was required to cover eating disorders as a non-biologically based mental illness.¹⁴

Horton, et al. v. Wellpoint Inc., et al., (2010), Case No. BC341823 (Super. Ct. Cal.)

Blue Cross of California settled with two classes of Californians whose plans were rescinded after retroactive review based on a health history questionnaire. Blue Cross agreed to make significant business changes, including discontinuing retroactive cancellations and “review[ing] the claims for

the approximately 6,000 [insured individuals] that were rescinded and compensat[ing] those who qualify accordingly.”¹⁵

MEDICAL DISCRIMINATION

Cookson v. NUMMI, (2013), C10-02931 CRB (N.D. Cal.)

When New United Motors & Manufacturing, Inc. (“NUMMI”), California’s last auto plant, closed in 2011, those on “medical leave were denied severance benefits and transitional services that other employees received.”¹⁶ While “EEOC charges were pending,” a class action was filed and “the EEOC, NUMMI and the workers all agreed to resolve the matter” with a settlement totaling \$6 million, providing relief to over 500 workers.¹⁷

NOTES

¹ <http://centerjd.org/content/first-class-relief-how-class-actions-benefit-those-who-are-injured-defrauded-and-violated>

² *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 2007 Mealey’s Jury Verdicts & Settlements 103 (2007).

³ Order Approving Settlement, *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, Case No. ESX-L-3585-02 (February 2, 2007). See also *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 2007 Mealey’s Jury Verdicts & Settlements 103 (2007).

⁴ *Lavender, et al. v. Skilled Healthcare Group, et al.*, 2010 Jury Verdicts LEXIS 33164 (July 6, 2010).

⁵ Stipulation of Settlement, *Bouchard v. Optometrix*, Case No. BC416146 (November 15, 2011).

⁶ Notice of Proposed Settlement of Class Action, Direct Purchaser Plaintiffs’ Counsel’s Motion For Attorneys’ Fees, and Hearing Regarding Settlement, *In Re: Hypodermic Products Direct Purchaser Antitrust Litigation*, Case No. 05-cv-1602 (JLL/MAH) (December 14, 2012).

⁷ *Id.* See also *In Re Hypodermic Products Direct Purchaser Antitrust Litigation*, 2012 Jury Verdicts LEXIS 16903 (November 15, 2012).

⁸ Catherine Fredenburgh, “Judge Approves Settlement Over Hospital Bed Discounts,” *Law360*, June 17, 2014, <http://www.law360.com/articles/7026/judge-approves-settlement-over-hospital-bed-discounts>.

⁹ *Ibid.* See also *Spartanburg Regional Health Services Inc., et al. v. Hillenbrand Industries Inc., et al.*, 2006 Mealey’s Jury Verdicts & Settlements 3928 (February 2, 2006).

¹⁰ Notice of Class Action Regarding Blue Cross Blue Shield of Michigan Coverage For Applied Behavior Analysis Treatment For Autism Spectrum Disorder, *Johns v. Blue Cross Blue Shield of Michigan*, Case No. 08-cv-12272 (unpublished, attached to Settlement Agreement dated July 23, 2009). See also *Johns v. Blue Cross Blue Shield of Michigan*, 2009 Mealey’s Jury Verdicts & Settlements 440 (July 23, 2009).

¹¹ Erin Marie Daly, “Health Net To Pay Up To \$261M To Settle Suits,” *Law360*, August 8, 2008, <http://www.law360.com/articles/65653/health-net-to-pay-up-to-261m-to-settle-suits>.

¹² *Ibid.*

¹³ Health Net Class Action Litigation Notice, *McCoy v. Health Net Inc.*, Case No. 2:03-cv-01801-FSH-PS (May 14, 2008). See also Erin Marie Daly, “Health Net To Pay Up To \$261M To Settle Suits,” *Law360*, August 8, 2008, <http://www.law360.com/articles/65653/health-net-to-pay-up-to-261m-to-settle-suits>.

¹⁴ *DeVito, et al. v. Aetna Inc.*, 2008 Mealey’s Jury Verdicts & Settlements 526 (2008).

¹⁵ *Horton, et al. v. Wellpoint Inc., et al.* 2007 Mealey’s Jury Verdicts & Settlements 1644 (2007). See Settlement Agreement and General Release, *Horton, et al. v. Wellpoint Inc., et al.*, Case No. BC341823 (May 7, 2010). See also *Horton, et al. v. Wellpoint Inc., et al.*, 2007 Mealey’s Jury Verdicts & Settlements 1644 (2007).

¹⁶ U.S. Equal Employment Opportunity Commission “\$6 Million Settlement for NUMMI Workers,” August 19, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/8-19-11.cfm>.

¹⁷ *Ibid.*