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Large Companies Face Criticism Of Relationships With Neutrals

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LOS ANGELES — Plaintiffs' lawyers in a class action against Blue Cross are demanding the health care provider disclose information about its relationship with its sole arbitration provider, JAMS.

Related Story, page 9

Lawyers for Wellpoint and its Blue Cross of California subsidiary have countered with a motion to protect discovery pending the outcome of a petition to compel arbitration.

A hearing on the matter is set for today in Los Angeles County Superior Court. *Bruns v. Wellpoint,* BC359135 (L.A. Super. Ct., filed Sept. 25, 2006).

The dispute underscores an opinion often held by consumer attorneys and others in the legal community of a perceived conflict of interest between large companies and their neutral providers.

But lawyers contacted for this story, including plaintiffs' lawyer Scott C. Glovsky, who represents the class over coverage issues, say it is the first time they have heard of trying to force a court to look at the issue.

"If you are looking at it from the arbitrator's perspective, you are essentially on the payroll of those who hire you, and it's to your economic interest to be hired again," said Glovsky of Arkin & Glovsky in Pasadena.

"The system is rigged," he added.

Glovsky is asking Blue Cross for all documents relating to its business relationship with JAMS, other than specific disputes, from the time

See Page 9 — LARGE

Large Companies Face Criticism Of Relationships With Neutrals

Continued from page 1

the medical provider considered using the ADR firm as a dispute resolution provider to the present.

In addition, Glovsky wants to depose the companies' officers regarding that relationship.

In papers opposing the motion, Blue Cross lawyer Kurt C. Peterson of Los Angeles' Reed Smith contends that pursuing discovery is improper pending a ruling to compel arbitration.

"Blue Cross suspects that plaintiff will argue he needs to conduct discovery to oppose Blue Cross' petition to compel arbitration," Peterson writes. "However, the relevant statutes and the California Supreme Court do not give plaintiff this right."

Reached by phone, Peterson said he could not comment on the conflict-of-interest issue without permission from his client.

Jay Welsh, JAMS executive vice president and general counsel, emphasized JAMS has no contractual or other "official" relationship with Blue Cross.

Of 10,000 cases the firm arbitrated last year, Welsh said, Blue Cross was involved in only 15. Moreover, he said, most of JAMS repeat business comes from plaintiffs' lawyers.

But although consumer lawyers say arbitration has its place, they contend it also has many drawbacks, and the perceived unfairness of favoring repeat clients of large corporations rates high.

"The problem with arbitration is the arbitrators often are afraid to rule against health care providers because it might cause them not to be hired again as neutrals," consumer attorney Neville Johnson of Johnson & Rishwain in Beverly Hills said.

Moreover, consumer lawyers say, arbitration is not always fast, fair or inexpensive, as it often is touted to be. And binding arbitration offers no chance for judicial review.

"I think it has always been a concern that everybody has had since day one that the large repeat customers of ADR services are going to have some leg up in the arbitration process," said Steven Glickman, president of the Los Angeles chapter of the American Board of Trial Advocates.

By repeat customers, he said, he's talking about large corporations, such as health care insurers.

Arbitration can be an excellent process when both parties agree, Glickman of Glickman & Glickman in Beverly Hills said.

"But forced pre-dispute arbitration that people never thought about when they signed up for insurance takes away that finding of fairness," he said.