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Plaintiffs Can Look Into JAMS' Relationship With Blue Cross

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LOS ANGELES — A Los Angeles judge Thursday agreed to let plaintiffs in a class action against Blue Cross obtain information about the health-care provider's relationship with its sole arbitration provider, JAMS.

In denying Blue Cross' motion to prevent discovery, Superior Court Judge Aurelio Munoz ruled plaintiffs are entitled to depose witnesses and obtain documents "from the person most knowledgeable at Blue Cross" about the company's relationship with JAMS, from the time the health-care provider began using the firm to the present.

Moreover, Munoz ruled, the discovery is to include documents in any prior resolutions of cases between Blue Cross and JAMS. *Bruns v. Wellpoint*, BC359135 (L.A. Super. Ct., filed Sept. 25, 2006).

Plaintiffs' lawyer Scott C. Glovsky called the ruling a "significant victory," saying it will lay a foundation for this type of discovery in other cases.

"For example, when employees have an employment dispute, those employees will be able to engage in similar discovery with the arbitration," Glovsky, a partner at Arkin & Glovsky in Pasadena, said.

He added that Munoz's ruling was particularly important because the judge, in essence, is saying the neutrality of an arbitration company is relevant to whether the case proceeds to arbitration.

Critics have complained that the problem with arbitration is the perceived notion that arbitrators often are afraid [illegible] against corporate

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tise to pursue the nuisance claims on their own, and that the government agencies maintain decision-making authority and control over the litigation.

Komar was unpersuaded, saying the cost of litigation is irrelevant and concluding that there is no way of knowing how much influence the private law firms exercise.

"Oversight by government attorneys does not eliminate the need for or requirement that outside counsel adhere to the standard of neutrality," the judge wrote. *County of Santa Clara v. Atlantic Richfield Co.*, 1-00-CV-788657.

Komar is giving the cities and counties a month to negotiate new fee agreements with outside counsel "in accordance with this order."

Nothing in the judge's order appears to bar government agencies from hiring outside counsel to pursue public-nuisance claims, only a prohibition on contingency-fee agreements.

Santa Clara County Counsel Ann Ravel said the county will file a writ appealing the decision.

"We firmly believe that this decision is erroneous, that the *Clancy* case is not applicable," Ravel said.

"It would cost us so much money to do the cases [without a contingency-fee agreement," she complained. "We are faced with legions of high-priced lawyers. Essentially, it makes it impossible for a public entity to do the public's work."

Komar's decision, if upheld, also would be a blow to leading plaintiffs' firms such as Cotchett, Pitre & McCarthy that would be denied the opportunity to pursue potentially lucrative public-nuisance claims against companies that have manufactured lead paint.

The issue of such agreements in lead paint litigation has cropped up across the country.

Bonnie Campbell, a spokeswoman for the defendants and a former Iowa attorney general, said the issue is part of an appeal by the industry in litigation filed by the Rhode Island attorney general's office.

On Thursday, an investment blog called Valueplays asserted that the Santa Clara ruling will have a "dramatic impact" on the Rhode Island appeal and influence cases in other jurisdictions.

Ravel, however, said she does not believe Komar's ruling, if upheld, would have a major impact on cases pending in other states because it is limited to the judge's interpretation of a California court ruling.