

New Class Action Certification

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Class Certified in N.J. Doctors' Suit Over HMO's Claim-Payment Foibles

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An Essex County judge last Tuesday certified a class of more than 40,000 doctors seeking to recover tens of millions of dollars from an HMO that allegedly delayed paying claims.

Superior Court Judge James Rothschild said he could "envision no effective judicial mechanism other than a class action" to adjudicate the issues.

But Rothschild denied class status for the portion of the case seeking damages for underpayment and denial of doctors' claims - via downcoding, bundling and other practices - due to failings in all four R. 4:32 class-action prerequisites: commonality, typicality, predominance of common issues and manageability.

He did grant class status on the nonpayment and underpayment claims for a subclass of 1,884 pediatricians, even though, as he acknowledged, neither party had asked for a pediatrician-only class.

The suit, *Sutter v. Horizon*, L-3685-02, alleges Horizon Blue Cross/Blue Shield of New Jersey engaged in abusive claims-processing practices that violated New Jersey law and breached its contracts with the doctors.

Counsel for both sides agreed at oral argument that class certification on the late payments boiled down to a single question: whether individual examination was needed to determine if each physician was owed money.

Rothschild held it did not. He rejected Horizon's argument that class status was not warranted because some doctors who treated Horizon subscribers might claim little or no loss. Based on evidence showing reimbursement claims were common - averaging as many as 2,500 per doctor, and were mostly paid late - "the possibility that any but a handful of the 40,000 physicians are owed nothing is obviously statistically close to zero and not nearly high enough to preclude class certification," he wrote.

The relatively small amounts of money to which each doctor might be entitled made individual suits unlikely, so that denial of class status would render state prompt payment laws "virtually meaningless," he added.

Rothschild's ruling followed the lead of Judge Ronald Freeman in Camden County, who in 2003 certified a physician class asserting late payment claims in *Zakheim v. Amerihealth HMO*, L-6235-00.

The claims for decreased or denied payments, on the other hand, were complicated by the 55 medical practice specialties involved, doctors' disparate billing practices and other factors.

Daly Temchine, of Epstein Becker & Green, who represents Horizon, says his client has not yet decided whether to appeal but declines further comment.

David Mazie and Eric Katz of Livingston's Nagel Rice & Mazie represent the plaintiff class.