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Judge Certifies Class Action Against Insurer

30,000 state workers claim they're owed $100 million

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After a decade of deliberations, a class action claim filed on behalf of 30,000 state workers against health insurer Anthem was certified last month by Hartford Superior Court Judge Michael Sheldon, as one of his final acts as a trial judge. With nearly $100 million in damages at stake, it is the largest such case in the state courts.

Sheldon's elevation to the Appellate Court a few days later, announced on Dec. 20, required a new judge to take over, and the job has been given to Hartford Superior Court Judge William Bright, on the complex litigation docket. The case was launched a decade ago when the company made a lump-sum stock payment to the State of Connecticut but not to worker members when it converted from a mutual insurance company to a stock company.

Because policy holders own mutual insurance companies, the companies typically issue some combination of cash and stock to customers when they convert to a publicly traded stock company. Now retired Public Defender Ronald Gold, started wondering why his relatives who worked for private companies were receiving substantial cash payments when Anthem converted while he received nothing. Employees in private-sector companies were paid between $2,000 and $15,000 for their membership interests when Anthem de-mutualized.

In the case of Connecticut state workers and retirees, Anthem made a lump-sum payment of stock to state Comptroller Nancy Wyman, which the state sold six months later for $96 million. Gold, represented by E.J. Robbin Greenspan of Rogin Nassau in Hartford, and Daniel Blinn of the Consumer Law Group in Rocky Hill, contends the money should have gone to the state workers either individually, or as a group, but not to the state.

The plaintiffs also sued Connecticut for a wrongful taking of the money, but the Supreme Court held it was shielded by sovereign immunity. Anthem remains as the sole defendant.

Anthem's parent company, WellPoint, Inc., disclosed no plans to attempt to appeal Sheldon's class certification, which would have to be a rare mid-case "interlocutory" appeal. A spokeswoman responded to Sheldon's decision by stating, "Anthem strongly believes that it properly distributed stock to the State of Connecticut as its eligible statutory member in accordance with all applicable laws, and we will continue to vigorously defend the case."

For the plaintiffs, Greenspan was delighted to attain class action status. "If this case didn't get certified, it's hard for me to imagine what case would ever get certified," she said. "Judge Sheldon wrote a really well thought out, reasoned decision."

Anthem is represented by Shipman & Goodwin locally, along with lawyers from the Washington D.C. firm of Hogan Lovell. Adam Levin made the oral argument against certification.

Under state Practice Book rules, the requisite features of a class are numerosity, commonality, typicality, and adequacy of representation. That means the class needs to have sufficiently numerous members, the members have similar claims in common, the representative plaintiffs claims need to be typical, and the plaintiffs and their lawyers need to be suited to represent the class.

Once those four points are established, the court needs to find *predominance* and *superiority* in the class action remedy. That is, questions of law or fact common to all class members needs to predominate over individual claims, and the class action form needs to be superior to other methods for fair and efficient adjudication of the matter.

Contributed Photo

E.J. Robbin Greenspan of Rogin Nassau in Hartford contends the money Anthem paid to the State of Connecticut should have gone to state workers who were policy holders when the company converted from a mutual to a stock company.

Company Disputes Class

Anthem didn't argue with the numerosity and commonality requirements, and "sensibly" agreed there were so many potential claimants, separate cases joined together would be impractical, Sheldon noted. Anthem also conceded that there is at least one common issue of law or fact throughout.

However, Anthem objected on "typicality"

and adequacy of representation grounds. In short, it contended that individual claimants would be battling among themselves due to divergent objectives and differing factual situations. The most complete roadmap to failure of class certification is another Anthem matter, the 2005 state Supreme Court decision of *Collins v. Anthem*. In that case thousands of doctors claimed the insurer was compensating them unfairly for their treatments of Anthem policyholders. The court concluded that differences among the doctors' specific claims would require thousands of individual doctors to be "paraded" through court to prove causation, damages and counter defenses. The class was de-certified.

Similarly, the team of lawyers from Hogan Lovell, argued that the claimants in this case would disagree whether they should be paid in stock or in cash, and would be divided due to the fact that they were advancing alternative theories of recovery. Early in the litigation, the plaintiffs contended Anthem needed to pay each insured state worker or retiree individually, for the value of their membership in the mutual insurance company.

After Anthem pointed out that some policy language designated the "group as a whole" as the entity entitled to receive payment in the event of demutualization, the plaintiffs added that option as an alternative remedy.

Because the class had not been certified until now, the plaintiffs have not yet learned exactly how Anthem decided how much each individual deserved to be paid, to come up with the payment it made to the state in stock.

Greenspan explained that Anthem has not yet given plaintiffs "the formula they used to determine exactly how much stock each member received. They have a description of the formula. They put in how long the person had been insured by Anthem or one of its predecessor companies, and the profits made by Anthem during the years they were involved."

Once they can establish the terms of the original demutualization process, the plaintiffs contended, they can apply them to each class member's coverage and claims history, "as documented in Anthem Insurance's own records," with relative ease.

On the other hand, Anthem hotly disputed this, Sheldon wrote, arguing the proof of damages "may be very complex and individualized" if calculated under the individual approach. Anthem also envisioned more conflict as plaintiffs quibbled over whether individual payments or "group as a whole" payment was the correct way to proceed. However, the judge reasoned, if the plaintiffs picked one of the two theories, the other would be deemed abandoned from the start. They would be doing a poor job of representing the class's legal interests if they didn't plead in the alternative. Furthermore, Sheldon concluded, making individuals prove "in their own separate lawsuits, the proper general basis for calculating the correct compensation would not only be a tremendous waste of time and judicial resources, but would risk producing multiple, potentially inconsistent determinations."

In the view of plaintiffs lawyer Greenspan, "The Gold case is pretty much a cookie cutter class certification case. It's 30 to 40,000 people who are identically situated."

Six years ago, when the state of Connecticut was a co-defendant with Anthem, Greenspan said a trial seemed inevitable. Now, since the issues have boiled down to pure matters of law, she sees the next stage as a matter of competing motions for summary judgment. If the case becomes an actual trial, it would be tried to a judge, since no jury request was made.

One factor that raises the stakes for Anthem is the passage of time in the matter. If the plaintiff's class prevails, it could request statutory interest on the award, at the rate of about 10 percent annually, Greenspan said. Anthem's expected to make a strong argument that its actions are covered by a savings clause which creates a presumption that its decisions on payouts in a situation like this are proper. And of course, if Anthem wins, there would be no interest payment necessary. ■