SIXTEEN

FRAUD

Deceptive Trade Practices Act — Breach of Fiduciary Duty

Creditors of bankrupt HMOs claimed fraudulent transfer

VERDICT	**$117,400,000**
ACTUAL	**$109,540,000**
CASE	J. Robert Wooley, Commissioner of Insurance for the State of Louisiana, as Liquidator for AmCare Health Plans of Louisiana, Inc., et. al. v Thomas S. Lucksinger, et al., *consolidated with* Wooley, et al. v. Foundation Health Corp., et al; and Wooley, et al, v. PriceWaterhouseCoopers, LLP, Nos. 499,737; 509297; 512,366
COURT	East Baton Rouge Parish District Court, LA
JUDGE	Janice Clark
DATE	6/30/2005
PLAINTIFF ATTORNEY(S)	Joseph "Jerry" McKernan (lead), McKernan Law Firm, Baton Rouge, LA (for Texas receiver) J.E. Cullens, Jr., Moore, Walters, Thompson, Thomas, Papillon & Cullens, A.P.L.C., Baton Rouge, LA (for Louisiana and Oklahoma receivers) James M. George, George & Brothers, LLP, Austin, TX (for Texas receiver) Guy M. Hohmann, Hohmann & Taube, Austin, TX (for Oklahoma receiver)
DEFENSE ATTORNEY(S)	James C. Percy, Jones, Walker, Waechter, Poitevent, Carrère & Denègre, Baton Rouge, LA

FACTS & ALLEGATIONS The original plaintiff is J. Robert Wooley, commissioner of insurance for the state of Louisiana, as liquidator for AmCare Health Plans of Louisiana Inc. He was later joined by state regulators for Oklahoma and Texas.

On April 30, 1999, HealthNet Inc., Woodland Hills, one of the nation's largest publicly traded managed health care companies, sold three HMOs to AmCareco, a newly formed company owned by Tom Lucksinger of Texas. The three HMOs became AmCare Health Plans of Louisiana, AmCare Health Plans of Texas and AmCare Health Plans of Oklahoma. HealthNet retained 47% ownership in their parent company, AmCareCo.

Within one to two years sale, all three companies failed to comply with state regulations requiring them to maintain minimal available funds for operation and were put into receivership

Wooley sued HealthNet and affiliated entities on behalf of their Louisiana creditors, who alleged to be owed approximately $9.5 million. His suit alleged fraud, deceptive trade practices and breach of fiduciary duty. Texas Special Deputy Receiver Jean Johnson intervened as a plaintiff on behalf of the companies' Texas creditors, who claimed to be owed $52 million and Commissioner of Insurance for the state of Oklahoma. And Kim Holland, in her capacity as receiver, intervened on behalf of the Oklahoma creditors, who claimed to be owed about $24 million.

The claims against the affiliated entities were settled, but HealthNet denied all allegations, and the claims against it proceeded to trial in Louisiana. However only Texas' claims were tried to a jury, because the Louisiana and Oklahoma plaintiffs were found not to have timely perfected their requests for jury trials. Thus, Oklahoma and Louisiana's case was decided by East Baton Rouge Parish District Court Judge Janice Clark

The plaintiffs alleged that, a few days after the sale was approved by state regulators in Texas, Louisiana and Oklahoma, $8.4 million was transferred from the HMOs to HealthNet and that this aspect of the transaction was not included in the documents submitted to the regulators. The plaintiffs alleged that, subsequent to the transaction documents being approved, a new section was added to the sale agreement which allowed HealthNet to take the $8.4 million from the HMOs. The plaintiffs alleged that this addition to the agreement was never filed with or seen by the state regulators. To the contrary, a few days after the transaction was approved, HealthNet and AmCareco entered into a new closing agreement allowing transfer of the $8.4 million.

The plaintiffs claimed that AmCareco needed the $8.4 million to keep the HMOs in operation and in compliance with state laws requiring them to have certain minimum amounts of funds available. The plaintiffs further alleged that HealthNet, although aware that the HMOs had insufficient capital, took an additional $2 million from AmCareco, further adding to HMOs' insolvency

The plaintiffs alleged that HealthNet knew that the HMOs could not be profitable if they transferred $8.4 million back to HealthNet, yet accepted the funds regardless of this knowledge and, on top of that, did not report this aspect of the transaction to the state regulators

The defense argued that the documentation of the sale, as approved by all three states' regulatory agencies, made it abundantly clear that $8.4 million would be returned to HealthNet, which also claimed not to have known of any financial problems with the companies until two years after the sale

INJURIES/DAMAGES The Texas creditors claimed to be owed about $52 million. They also sought punitive damages.

At the bench trial on their claims, the Oklahoma and Louisiana creditors claimed to be owed about $24 million and $9.5 million, respectively. Both groups also sought punitive damages.

RESULT The jury found that HealthNet was 85% responsible for the fraud and unfair trade practices, and the settling entities were 15% responsible. The jury awarded the Texas plaintiffs $52.4 million in compensatory damages and $65 million in punitive damages, resulting in a gross award of $117,400,000 and a net of $109,540,000.

POST-TRIAL On HealthNet's motion for a judgment notwithstanding the verdict, the court reapportioned fault, finding HealthNet 70% responsible and the other entities 30% responsible. Also, the court reduced the punitive damages award by 30% to $45.5 million, resulting in the Texas creditors recovering TK.

On the bench trial of the Louisiana and Oklahoma claims, the judge found for the plaintiffs on Nov. 4, awarding $24 million in compensatory damages to the Oklahoma creditors and $9.5 million in compensatory damages to the Louisiana creditors. The judge further ruled that the plaintiffs in those jurisdictions are entitled to punitive damages in an amount not yet set.

DEMAND	$30 million
OFFER	$500,000
TRIAL DETAILS	Trial Length: 2 weeks Trial Deliberations: 4 hours

–Lisa Braunstein