

Aurora Health Care, Inc. and Wisconsin Physician Service Insurance Corporation engaged in lawsuit

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Many members of the Wisconsin Medical Society (Society) have a relationship with Aurora Health Care, Inc. (Aurora) and Wisconsin Physician Service Insurance Corporation (WPS) and may be personally impacted by the outcome of the case between the parties. In addition, the outcome of the case may have an effect on current and future contracts between other payers and physicians. Due to the potential impact this case may have on our members, the Society is providing a brief summary of the ongoing dispute between Aurora and WPS.

On December 28, 2005, Aurora (the state's largest hospital system) filed *Aurora Health Care, Inc. vs. Wisconsin Physician Service Insurance Corporation* (Case No. 2005CV911279), a lawsuit alleging that WPS (one of the largest health insurers and administrators in Wisconsin) materially breached its 15-year contract (signed in 2001) by offering, operating, and administering health care plans in the Aurora service area in which WPS refused to identify Aurora providers as "Preferred Providers." Aurora also alleged that WPS breached its contract by failing to include all Aurora providers in all WPS plans. Aurora requested the Court declare that WPS materially breached the contract with Aurora and award Aurora damages.

On February 17, 2006, WPS filed its response and counterclaims. In its response, WPS denied breaching the contract with Aurora. WPS's counterclaims alleged that Aurora violated state antitrust law by leveraging its dominant market position in certain markets to insist that insurers that want to offer Aurora's system in any insurance product must offer the Aurora system as a top-tier provider network in every insurance product they offer. WPS further alleged that this conduct prevented insurers in eastern Wisconsin from offering less costly options that might not include Aurora and has resulted in the Milwaukee market having the highest hospital costs of any metro area its size in the country.

WPS requested the Court declare that WPS did not violate its contract with Aurora and dismiss Aurora's breach of contract suit. It further requested the Court declare Aurora's conduct in violation of Wisconsin antitrust laws, enjoin Aurora from requiring that WPS and other health insurers agree to offer Aurora's network in every product they offer, declare the WPS/Aurora contract void, and award WPS repayment of all amounts previously paid to Aurora under the contract, triple damages and attorney's fees.

On April 3, 2006, Aurora filed a

reply to the counterclaims of WPS, in which it stated that its conduct did not restrain competition in markets for health care services in Wisconsin, but in fact increased it. Aurora requested the Court dismiss all WPS' counterclaims and award Aurora costs.

The parties agree that Aurora raised the issue of the alleged material breaches by WPS in October of 2004, and that the parties met several times to discuss their concerns. The parties were unable to informally resolve the dispute and an attempted mediation in October of 2005 was unsuccessful. The inability of the parties to reach agreement on the issues to date suggests that a trial is likely.

This brief article is intended to provide an overview of the pending dispute between Aurora and WPS. Limited information about the case is available at <http://wcca.wicourts.gov/index.xs>, the Wisconsin Circuit Court Access Web site. Aurora has posted information about its position on its Web site at: www.aurorehealthcare.org/aboutus/wps.asp. It is the policy of WPS to refrain from commenting on pending litigation. Finally, Society members seeking more detailed information about the case may view the court file at the Milwaukee County Circuit Court, Clerk of Court's Office, 901 N 9th St, Milwaukee, Wis.

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