

## Managed Care and ERISA

### Straight Talk Covering Managed Care and ERISA Challenges

For more than 20 years, the managed care trial group at Andrews Kurth has effectively influenced how managed care and ERISA cases are decided by the Courts. Representing managed care companies, insurance companies and plan administrators, Andrews Kurth lawyers have been at the forefront of this rapidly-expanding industry, securing precedent-setting results for our clients. Numerous cases have garnered national publicity and are now routinely recognized in the legal community as standards by which certain managed care issues are decided.

Our managed care trial lawyers are thoroughly versed in every aspect of the law affecting managed care companies and ERISA plan administrators. It is what we do every day. Highlights of our representative matters include a U.S. Supreme Court win involving ERISA complete preemption and a recent high-profile First Amendment case victory involving defamation allegations against a managed care company.

Representing clients at the trial and appellate court levels, our lawyers have wide experience in defending clients who have been sued by individual plaintiffs to defending clients in putative class actions where plaintiffs seek millions of dollars in damages. Areas of our counsel include trials involving the following:

- ERISA and Medicare benefits
- Bad faith
- Medical liability
- ERISA breach of fiduciary duty claims
- ERISA class action lawsuits
- COBRA issues
- Deselection of providers from managed care networks
- Contractual reimbursement and prompt pay penalty disputes with provider groups, hospitals and hospital systems
- Declaratory judgment actions challenging state statutes purporting to regulate managed care companies

### Our Approach

Andrews Kurth has a substantial background involving issues pertaining to the scope of ERISA preemption and the application of the doctrine to various factual settings. In addition, we have significant experience defending managed care companies in class action lawsuits. This knowledge, when combined with the group's practical approach to litigation, results in a formidable representation of managed care companies facing litigation challenges.

### Extensive Trial Experience

Many of our managed care and ERISA cases are resolved by motion or favorable settlement. However, when cases must be tried either in court or before an arbitration panel, clients can rely upon our extensive trial experience in managed care cases, which frequently furthers our ability to achieve favorable pre-trial outcomes.

Andrews Kurth's lawyers represent managed care companies and fiduciaries in Texas and around the country.

### Representative and Reported Cases

- **Complete Preemption/U.S. Supreme Court**—*Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004). Capping a decade of litigation, the U.S. Supreme Court unanimously held that participants' state law claims alleging injuries arising from Aetna's decisions not to provide coverage for physician-recommended treatment were completely preempted by ERISA.
- **First Amendment/Defamation Lawsuit**—*TMJ Implants, Inc. v. Aetna, Inc.*, 405 F. Supp. 2d 1242 (D. Colo. 2005), *aff'd*, 498 F.3d 1175 (10th Cir. 2007). Successfully represented a managed care company in a lawsuit brought by a manufacturer and marketer of medical devices alleging defamation and commercial disparagement over the client's

## Managed Care and ERISA

clinical policy bulletin. Obtained dismissal of the case on First Amendment grounds in the federal District Court of Colorado. This ruling was affirmed by the Tenth Circuit.

- **Liability for State Tort Damages**—*Corporate Health Ins., Inc. v. Tex. Dep't of Ins.*, 314 F.3d 784 (5th Cir. 2002); *Corporate Health Ins., Inc. v. Tex. Dep't of Ins.*, 200 F.3d 641 (5th Cir. 2000); *Corporate Health Ins., Inc. v. Tex. Dep't of Ins.*, 215 F.3d 526 (5th Cir. 2000); *Corporate Health Ins., Inc. v. Tex. Dep't of Ins.*, 12 F. Supp. 2d 597 (S.D. Tex. 1998). Five years of litigation challenging a Texas statute purporting to hold managed care entities liable for state tort damages in connection with plan administration. As a result, the liability provision of the statute was narrowly construed to encompass only vicarious liability claims, vastly reducing our client's risk of exposure under the statute.
- **Dispute with Former Customer**—*Administaff, Inc. v. Aetna Life Ins. Co.*, No. H-01-3802 (S.D. Tex. 2003). After a nine-day jury trial, the jury rejected all of a former customer's claims for at least \$380 million in goodwill and other tort damages, ultimately resulting in settlement for a portion of the rate increase which formed the basis of the remaining contract claim.
- **Prompt Pay Claims**—*San Antonio-MMC d/b/a MacGregor Med. Ctr. v. Aetna Health Inc.*, AAA No. 70 193 00403 06 (2008). Successfully represented a managed care company in an arbitration proceeding in which a physician group alleged, *inter alia*, prompt pay violations on 30,000 claims for services provided over a five-year period.
- **Provider Contract Claims**—*Mem'l Hosp. at Gulfport v. Aetna Health Mgmt., Inc.*, No. 1:04CV709-LG-RHW (S.D. Miss. 2007). Defended a managed care company against a hospital's claims for breach of a provider agreement, bad faith, and mutual and unilateral mistake, with alleged damages of \$1.6 million. After the summary dismissal of all but the mutual mistake claim, the remaining claim was tried to a jury, which rendered a take-nothing verdict in favor of the managed care company.
- **Lanham Act/Class Action Certification Denial**—*Ford v. NYLCare Health Plans of the Gulf Coast, Inc.*, 190 F.R.D. 422 (S.D. Tex. 1999), *aff'd*, 301 F.3d 329 (5th Cir. 2002). Represented Aetna in defeating plaintiff's motion for class certification of a national class of all board-certified physicians who contended that Aetna's advertising to prospective HMO members forced board-certified physicians into unfavorable contracts. The Fifth Circuit affirmed the denial of class certification and affirmed the granting of a summary judgment in favor of the firm's client with respect to the physician's Lanham Act claim challenging Aetna's advertising to prospective HMO members.
- **ERISA Preemption**—*Haynes v. Prudential Health Care*, 313 F.3d 330 (5th Cir. 2002). Citing the Supreme Court's continuing battle to "grapple with the precise scope" of express preemption, the Fifth Circuit affirmed the dismissal of a negligence claim seeking in excess of \$10 million against the firm's client for alleged failure to properly manage a patient's medical condition, on grounds that the claim was "expressly preempted" by ERISA.
- **Physician Deselection**—*Tex. Med. Ass'n v. Aetna Life Ins. Co.*, 80 F.3d 153 (5th Cir. 1996). Our argument on behalf of Aetna prevailed in a precedent-setting physician "deselection" case. We advocated that terminated physicians had no private cause of action under Texas law to enforce PPO rules, and lacked standing to assert unfair competition claims against Aetna. The Fifth Circuit affirmed the trial court's dismissal of the case.
- **Fiduciary Duty/ERISA Preemption**—*Ehlmann v. Kaiser Found. Health Plan*, 20 F. Supp. 2d 1008 (N.D. Tex. 1998), *aff'd*, 198 F.3d 552 (5th Cir. 2000). Rejected contention in a putative class action that Aetna had a fiduciary duty to disclose physician compensation terms, and dismissed various state law consumer fraud claims as preempted by ERISA, effectively eliminating a managed care liability theory of recovery against the industry.
- **Breach of ERISA Fiduciary Duty**—*Rhorer v. Raytheon Eng'rs & Constructors*, 181 F.3d 634 (5th Cir. 1999). The Fifth Circuit affirmed the dismissal of an ERISA plan beneficiary's breach of ERISA fiduciary duty claims and all associated state law claims. The remaining benefit claim was resolved on terms we believe were very favorable to our client.
- **Defense Libel Jury Verdict**—*Khalil v. Aetna Life Ins. Co.*, No. H-03-5874 (S.D. Tex. 2005). Defended Aetna in a jury trial in federal court brought by a Houston surgeon alleging that Aetna had libeled him. Obtained a directed verdict after cross-examination of the plaintiff.
- **ERISA Plan Benefits**—*High v. E-Systems Inc. Long Term Disability Income & Death Benefit Plan*, 459 F.3d 573 (5th Cir. 2006). The Fifth Circuit affirmed summary judgment in favor of the ERISA administrators in an opinion often cited for its ERISA standard of review principles.