



# Henstorf v. State Compensation Insurance Fund (Cal. S.Ct.)

2009 Cal.Ap.. Unpub. LEXIS 7200 (Cal. App. 2009)

Topics Covered: Antitrust

**Outcome: Very Unfavorable**

## Issue

The issue in this case was whether an arrangement between State Compensation Insurance Fund (SCIF) and WellPoint Health Networks for the provision of worker's compensation payments to participating physicians created a collusive buyer monopsony that violated the California antitrust laws.

## AMA Interest

The AMA supports a level playing field in negotiations between physicians and insurers.

## Case Summary

The named plaintiffs in this putative class action were four orthopedic surgeons who practice in a California orthopedic surgery group. The defendant, SCIF, was the largest provider of workers' compensation insurance coverage in California. The plaintiffs were part of a network that provided medical care to workers' compensation patients of SCIF's insureds.

Until 2005, WellPoint also maintained a provider network for its workers' compensation business, but SCIF generally paid more to its workers' compensation providers than did WellPoint. In mid-2005, however, SCIF dissolved its provider network and required its member physicians to contract with WellPoint in order to furnish medical services to workers' compensation patients of SCIF's insureds. Thus, the named plaintiffs were compelled to join the WellPoint network if they were to continue servicing the SCIF workers' compensation patients. This resulted in the plaintiffs' having to accept below-market rate compensation as well as other disadvantages of participation in the WellPoint network.

The arrangements between SCIF and WellPoint were alleged to constitute price fixing, a *per se* violation of Section 16720 of the California Business & Professions Code, which is part of the California antitrust laws. SCIF demurred to the First Amended Complaint, arguing that it failed to allege a *per se* price-fixing violation under California law. The trial court granted the demurrer, without leave to amend the complaint further. The plaintiffs appealed, and the

California Court of Appeal affirmed the dismissal in an unpublished decision. The plaintiffs then asked the California Supreme Court to accept discretionary review, but the Supreme Court denied this request.

### **Litigation Center Involvement**

The Litigation Center joined the California Medical Association in requesting leave to file an *amicus curiae* brief in support of the plaintiffs before the Court of Appeal. Unfortunately, the Court of Appeal denied permission to file the brief. The Litigation Center and the California Medical Association also submitted a letter brief to the California Supreme Court, urging it to accept jurisdiction.

Court of Appeal of the State of California brief

California Supreme Court letter brief