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Louisiana -- High Court: PPO Discounts Don't Violate Comp Act: [Top \[12/02/10\]](#)

By John P. Kamin, Legal Editor

Employers and insurers won a major victory this week when the Louisiana Supreme Court unanimously ruled that taking discounts allowed by valid preferred provider organization (PPO) contracts with workers' comp medical providers does not violate state law, but a significant issue impacting potential liability remains.

The state's high court ruled Tuesday that payments to providers at rates lower than the state's fee schedule pursuant to PPO contracts do not violate the state's workers' compensation laws -- but did not reach the issue of what notice must be given before taking those discounts. The unanimous decision, titled *Agilus Health v. Accor Lodging N.A.*, reversed the 3rd Circuit Court of Appeal's March ruling that the PPO discounts did violate the Act.

The high court's *Agilus* decision arrived amid a number of appellate court rulings in recent months awarding providers reimbursements for PPO discounts that were taken off their charges, along with penalties and attorney fees that tended to dwarf the actual reimbursements. For example, Louisiana's 3rd Circuit Court of Appeal recently awarded \$55,000 in attorneys' fees in *CLASC v. Rapides Parish School Board*, despite the fact that the actual reimbursement damages totaled only \$14,457.

Roger Javier, the employers' attorney in the *CLASC* case, said that while the *Agilus* decision was a major victory for defense attorneys, several important issues remain to be adjudicated.

He pointed out that the high court never actually reached the issue of whether the defendants gave proper notice of a PPO discount in the *Agilus Health* decision. The court explained in a footnote that *Agilus Health* never raised the issue at the 3rd Circuit Court of Appeal, despite the fact that other parties have raised the point in similar PPO cases.

"You still have a semblance of Pandora's Box slightly shut, but not completely closed yet," Javier said. "The reason why is because the plaintiffs' counsel now will say, 'Fine, you've got a PPO contract in place. Fine, it's legitimate. Fine, it's enforceable. But guess what -- you didn't give us notice. So therefore, you lose.' So that (notice issue) invalidates the contract, is what they're saying."

The Louisiana Supreme Court will have the option to consider the notice issued in the immediate future. Javier recently filed applications for writs of review in two cases where the notice requirements are at issue: *CLASC v. Payless Shoesource*, and *Musculoskeletal Institute of Louisiana, APMC v. McDonald's Corp.* Javier believes that the *CLASC* case has a stronger chance of being considered by the state's high court because of its large penalties and reimbursements.

The penalties and attorney fees present another pressing issue, because the notice requirement falls under Title 40 of the Louisiana Revised Statutes. Javier noted that the Workers' Compensation Act falls under Title 23, and the two titles contain differing penalty provisions.

"The penalty provisions under a violation of Title 40 arguably are exclusive to Title 40 penalties, which provide its own penalty provision -- separate and apart from workers' compensation penalties," he said. "That's another thing that should be addressed by the court, if writs are accepted in my cases."

Providers will argue that if an employer has failed to provide notice of a PPO discount under Title 40, that would also require penalties under Title 23, Javier said. The provider will contend that the lack of notice led to an improper discount, which violated the workers' compensation statutes under Title 23.

Javier expects to learn whether the high court will grant review in December or January.

In the meantime, *Agilus Health* still has the option of filing a petition for rehearing. WorkCompCentral left a number of messages for multiple attorneys on both sides of the case, but did not receive a response before deadline.

While Javier believes the plaintiffs will file a petition for rehearing, he noted that the high court will probably deny it because it was a 7-0 decision.

One recurring theme that appeared during oral arguments also re-emerged in the high court's decision. The last few paragraphs of Judge Philip C. Ciaccio's opinion repeatedly emphasized that Agilus was well aware of the impact of its PPO contract, and voluntarily signed it.

"Agilus was not forced to sign the contract, but did so for the benefit of receiving patient steerage in general, as their corporate representative testified," Ciaccio wrote. "This was a business decision, and Agilus could have, and did in 2008, opt out of the First Health Network."

To read the decision, go here:

<http://www.workcompcentral.com/pdf/2010/misc/SC-Agilus-11302010.pdf>.

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