

# MEALEY'S Managed Care Liability Report

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## Maryland Judge Imposes Sanctions Over HMO's Subrogation Records

ELLCOT CITY, Md.

A Maryland judge on Oct. 17 imposed sanctions against an HMO for failing to produce subrogation records according to the court's previous order (*Victor G. Riemer, et al. v. Columbia Medical Plan, Inc., et al.*, No. 13-C-96-31528, Md. Cir., Howard Co.; See 6/13/03, Page 25).

### Lost, Destroyed Records?

Howard County Circuit Court Judge James B. Dudley granted the second motion for sanctions against Columbia Medical Plan Inc. a/k/a Free State Health Plan Inc. filed by Victor G. Riemer and the class of Columbia Medical members he represents.

In its response to the Jan. 9 order compelling answers to interrogatories and to requests for production of documents, Columbia Medical "initially reported that all of the subrogation records were lost or

destroyed," Judge Dudley wrote in the order granting sanctions.

On Oct. 6, after the judge ordered Columbia to allow plaintiffs' counsel to inspect 75 boxes of potentially relevant subrogation documents found at a Columbia Medical storage facility, Columbia Medical forwarded 1,400 additional pages of documents to the plaintiffs, the judge said.

### 'Pattern Of Ineptitude'

"It now turns out there are actually 124 boxes of documents potentially relating to the subrogation claims in this case," Judge Dudley said.

"The depositions of Jeffrey Joy and Regina Grimes do not sufficiently establish perjury or willful falsification, but do clearly and convincingly establish a pattern of ineptitude on the part of the Defendant in dealing with preserving the records since the inception of this case and with

providing an conscientious efforts to comply with legitimate discovery requests or the order of the Court of January 9, 2003 compelling responses to discovery," Judge Dudley said.

### Sanctions Imposed

Judge Dudley ordered Columbia to provide the name, address and amount of subrogation paid by each member of the class within 15 days of the order.

He ordered Columbia to reimburse the plaintiffs for all costs of the depositions of Joy, Grimes, Sue Haynes and "any other employees and agents" of Columbia within 15 days of the order.

The reimbursement amount for the depositions is estimated to be more than \$4,000, F. Paul Bland Jr., an attorney with the Trial Lawyers for Public Justice in Washington, D.C., one of the attorneys who represents the plaintiffs, told

Mealey Publications Oct. 23. Judge Dudley ordered Columbia to pay plaintiffs' counsel \$3,500 within 15 days as "reasonable counsel fees" for taking the above-referenced depositions and for filing the second motion for sanctions.

An attorney for Columbia Medical declined to comment Oct. 23.

### **Damages**

In May, Judge Dudley ruled that Columbia Medical must repay its members for illegally seeking subrogation/reimbursement after the members recovered damages from a third-party tortfeasor.

The total amount of damages is more than \$5 million since 1993, Bland said. The plaintiffs and the class are rep-

resented by Kieron F. Quinn and Martin E. Wolf of Quinn, Gordon & Wolf in Towson, Md.; Robert K. Jenner of Janet, Willoughby, Gerson, Getz & Jenner in Baltimore; Bruce M. Plaxen of Plaxen & Adler in Columbia, Md.; and Bland. Columbia Medical is represented by Ralph S. Tyler of Hogan & Hartson in Baltimore.