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By John Roemer

## **Win Over HMO Gains National Recognition**

**SAN FRANCISCO -- Attorney Michael J. Bidart says his \$120.5 million win over Aetna U.S. Healthcare of California in January is more than the highest verdict ever against a health maintenance organization.**

It's also a potent weapon in ongoing Sacramento warfare over rewriting state health-care statutes to allow more citizens to sue their HMOs, Bidart and other legal experts assert.

"To Mr. Bidart's credit, he made this into a case not only against Aetna, but also against the laws which prevent all patients from having his client's remedies," said Jamie Court, director of the nonprofit lobby Consumers for Quality Care, which is based in Santa Monica.

"This was jurors sending a message to legislators," Bidart, 48, of Shernoff Bidart Darras & Dillon in Claremont, said in an interview last week. "Reform is essential."

His remark was an echo of his closing argument in the bad-faith suit, when Bidart convinced the jury to punish Aetna for "malice, oppression and fraud" in delaying a bone-marrow transplant that might have extended cancer patient David Goodrich's life.

Bidart, a successful litigator and an outspoken advocate of patients' rights, is a finalist for the Trial Lawyers for Public Justice lawyer of the year award, to be announced today in San Francisco during the group's annual meeting.

His victory against the California branch of the nation's largest HMO is one of nine cases in which the winning counsel are up for the nationally prestigious prize. Others include significant wins in diverse social arenas, including tobacco, gun and civil rights litigation.

Trial Lawyers for Public Justice, with a membership of more than 2,000, is a national organization based in Washington, D.C., overseeing a docket of public interest cases. The group's convention coincides with that of the Association of Trial Lawyers of America, also meeting in San Francisco this week.

Goodrich, a deputy district attorney in San Bernardino County, died of stomach cancer in 1995. His boss, District Attorney Dennis Stout, asked Bidart to sue on behalf of Goodrich's widow, Teresa.

The suit was possible because Goodrich was a government worker. The federal Employee Retirement Income Security Act -- which Congress declined to alter in partisan voting last week -- shields health plans offered by civilian businesses to their employees from bad-faith claims and punitive damage awards.

Bidart blames campaign contributions from health insurers for congressional reluctance to reform ERISA.

The insurance industry "can't buy you the way they buy a legislator," Bidart told the San Bernardino County jurors. *Goodrich v. Aetna*, RCV020499.

After trial judge Christopher Warner let the damage award stand, Aetna petitioned for a reduction to the 4th District Court of Appeal, where briefing is under way.

Aetna's chief executive, Richard L. Huber, called the verdict unfair. "You had a skillful ambulance-chasing lawyer, a politically motivated judge and a weeping widow," he told the Hartford, Conn., Courant. "That's no way to get justice."

An Aetna spokesman, Bobby Pena, said he would have no comment on the appeal or on Huber's reported statement.

Bidart said last week that Aetna has since issued an apology to his client, who broke into tears on the witness stand under cross-examination by Aetna lawyers.

"But they never apologized to me or to the judge," said Bidart, who graduated from Pepperdine University School of Law in 1974. "That was uncalled-for, and it tarnished things for me."

Lawmakers and lobbyists in both camps on the contentious health-care battleground have cited Bidart's huge jury award as they debate whether to extend the right to sue to the general public.

"Both sides do try to use large judgments like this," said Assembly Health Committee chairman Martin Gallegos, a Los Angeles Democrat who is a chiropractor.

"The industry says that a few \$120 million verdicts will put them out of business. I say this is exactly the kind of incentive they need to provide quality care in a timely fashion."

Gallegos, who huddled with Gov. Gray Davis last week over HMO reform, predicted Davis will sign a patient right-to-sue bill this year.

Reports late last week were that Davis may favor a bill limiting the right to sue to cases involving serious injury or death.

Health industry lobbyists argue that any new litigation rights should be paired with an extension of the \$250,000 limit on damages awards that is in place for medical malpractice cases.

Referring to the Medical Insurance Compensation Reform Act, Gallegos said that extending the MICRA damage cap to health maintenance insurers "comes up repeatedly" in discussions with tort reform advocates.

He's against it. "I can't see extending MICRA to multibillion-dollar HMOs," Gallegos said.

Assigning tort liability to HMOs would require state legislation poking a loophole in ERISA, which pre-empts bad-faith lawsuits against health insurers by workers who are insured by their employers. That's more than 80 percent of Americans.

In California, health-care reformers are pinning their hopes on Sen. Liz Figueroa's bill broadening patients' right to sue, Bidart said.

Figueroa, D-Fremont, is chairwoman of the Senate Business and Professions Committee. Her bill, SB21, is known as the Managed Health Care Insurance Accountability Act.

It would get around ERISA's broad pre-emptions in two ways. One is based on a 1995 federal appellate decision in Pennsylvania, *Dukes v. U.S. Healthcare Inc.*, 57 F.3d 350, which held that patients or their heirs can sue regarding the quality of care received from an HMO, even though benefits determinations

themselves remain off limits under the ERISA shield.