

STATE OF WISCONSIN

CIRCUIT COURT
Civil Division

MILWAUKEE COUNTY

AURORA HEALTH CARE, INC.,
3000 West Montana Street
Milwaukee, Wisconsin 53215

Plaintiff,

Case No. _____

vs.

Case Type: Other Contract
Case Code: 30303

WISCONSIN PHYSICIANS SERVICE
INSURANCE CORPORATION,
1717 West Broadway
Madison, Wisconsin 53708-8190,

Defendant.

HON. JOSEPH DONALD, BR. 12
CIVIL C

SUMMONS

THE STATE OF WISCONSIN, TO EACH PERSON NAMED ABOVE AS A DEFENDANT:

You are hereby notified that the plaintiff, Aurora Health Care, Inc., has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

FILED
DEC 2 2005
MILWAUKEE COUNTY COURT

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Milwaukee County Courthouse, whose address is 901 N. Ninth Street, Room 104, Milwaukee, WI 53233, and to Brian W. McGrath of Foley & Lardner LLP, plaintiff's attorney, whose address is 777 East Wisconsin Avenue, Milwaukee, WI 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint,

and you may lose your right to object to anything that is or may be provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 28th day of December 2005.

BRIAN W. McGRATH (WBN 1016840)
CAROLINE P. LAVELLE (WBN 1052415)

By:  _____

Attorneys for Plaintiffs Aurora Health
Care, Inc.

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COMPLAINT

The Plaintiff, Aurora Health Care, Inc. ("Aurora") by and through its undersigned attorneys, Foley & Lardner LLP, for its complaint, alleges as follows:

1. Aurora is a Wisconsin corporation with its offices and principal place of business located at 3000 West Montana, Milwaukee, Wisconsin 53215. Aurora is an integrated health care system comprised of participating physicians, hospitals and other health care providers and facilities properly qualified, licensed or certified to practice in accordance with the provisions of all applicable laws and regulations in the State of Wisconsin.

FILED
DEC 28 2005
JOHN BARRETT
Clerk of Circuit Court

2. Upon information and belief, Defendant, Wisconsin Physicians Service Insurance Corporation ("WPS"), is a Wisconsin corporation with its principal place of business located at 1717 West Broadway, Madison, Wisconsin 53713. WPS is a health insurance company that sells individual and group health insurance products to employers, associations and individuals and also administers plans that are self-insured by certain employers (generally large employers) and other entities.

3. The insured or administered Plans offered by WPS have many different names including: health maintenance organizations (HMOs); preferred provider plans or organizations (PPOs); point of service plans (POSs); consumer directed plans; limited service health organizations (LSHOs); high deductible plans; Medicare wrap or supplemental plans, and many others. The distinguishing factors are that some of these Plans constitute insurance provided by WPS and others are just administered by WPS (and self-funded by employers). Some Plans offer defined networks for which there are lower co-payments and deductibles when in-network providers are used. Some Plans charge per member per month fees, others charge set premiums, and others may be indemnity plans.

4. On December 11, 2001, Aurora and WPS entered into a written agreement effective July 1, 2001, pursuant to which WPS agreed that Aurora providers would be in “all WPS Plans” (the “Agreement”) of WPS and all of its subsidiaries and affiliates. A true and correct copy of the Agreement is attached hereto as Exhibit A. Specifically, pursuant to Section III B(1) of the Agreement, all Aurora providers (including all Aurora hospitals, physicians and other providers) were to be identified as contracted providers (defined in the Agreement as “Preferred Providers”) in “all WPS Plans” in Aurora’s service area of Eastern Wisconsin for a contract term of 15 years. WPS further agreed to encourage all of the Covered Members in all WPS Plans to utilize Aurora providers.

5. The term “Plan” is broadly defined in the Agreement to include all individual health insurance policies and group health insurance certificates issued by WPS and to include self insured plans administered by WPS. WPS is defined to include “its subsidiaries and affiliates,” so “all WPS Plans” expressly includes “all Plans” of WPS as well as any subsidiary or affiliate of WPS.

6. WPS has materially breached the Agreement by offering, operating and administering Plans in the Aurora service area, in which WPS has refused to identify Aurora Providers as "Preferred Providers" (defined in the Agreement as under contract with WPS). In these plans, Aurora Providers are not listed in the provider directory and Covered Members cannot access Aurora Providers for health care services as required under the Agreement without a financial penalty. Thus, WPS failed to encourage or even allow use of Aurora Providers in certain Plans.

7. In addition, despite WPS' express agreement to include Aurora Providers in all WPS Plans, including those of its subsidiaries and affiliates, at least one WPS subsidiary, WPS Health Plan (doing business as WPS Prevea Health Plan), has marketed and sold health care plans that specifically exclude Aurora Providers.

8. Aurora has brought these and other material breaches of the Agreement to WPS' attention. On or about October 11, 2004, in a face to face meeting, Aurora made WPS aware that its failure to include Aurora Providers in all WPS Plans was and is a material breach of the Agreement.

9. Since that time, Aurora representatives have met with representatives of WPS to discuss the breaches and to try to resolve them. Despite Aurora's consistent effort to work with WPS to find a resolution, WPS has repeatedly refused to allow Aurora Providers to participate in certain plans and has refused to identify or include Aurora Providers as contracted providers in all WPS Plans.

10. On or about June 24, 2005, Aurora provided WPS with a formal notice of breach and provided WPS with 30 days to cure.

11. On or about July 18, 2005, Aurora sent further notice of breach to WPS by letter stating that "There is no question and your letter acknowledges that you are selling and operating WPS plans in which Aurora providers are not included. That is a breach." A true and correct copy of this letter is attached hereto as Exhibit B.

12. On October 17, 2005, Aurora met with WPS to mediate their dispute. The mediation was conducted by The Honorable Michael Barron (Ret.). The mediation failed and WPS continues to be in breach of the Agreement.

13. WPS' breach of the Agreement has caused damages to Aurora in an amount to be determined by the trier of fact.

WHEREFORE, Aurora requests relief as follows:

- A. For a declaration that WPS materially breached the Agreement by refusing to identify Aurora Providers as contracted providers in all WPS Plans and to encourage utilization of Aurora Providers;
- B. For damages incurred by Aurora and caused by WPS' breach of the Agreement; and
- C. For such other and further relief as the Court may deem just and equitable.

Dated this 28th day of December, 2005.

BRIAN W. McGRATH (WBN 1016840)
CAROLINE P. LAVELLE (WBN 1052415)

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