

## Sure You Can Get Sick – But Not Too Sick

### **Court Battles Are Raging Over Bids To Cap Health Coverage**

Like most people with health coverage, John McGann didn't worry much about the high cost of medical care. Even when the Houston music store employee came down with AIDS in December 1987, he was confident his medical bills would be paid.

Eight months later, his employer, H&H Music Co., announced it was switching health plans. The new one would impose a \$5,000 lifetime ceiling on AIDS-related coverage while keeping the cap for other illnesses at \$1 million. "I felt betrayed," says McGann, 47, who adds that he has \$20,000 in AIDS-related medical bills that he can't pay. He has sued H&H and General American Life Insurance Co., which administers the plan.

Businesses and their employees have a lot at stake in McGann's case, and in a similar suit against Atlanta-based Storehouse Inc. If the courts rule for the workers, they could jeopardize the financial health of companies – especially small ones reeling under the cost of health benefits. If management wins, employees could no longer rely on promises of coverage for catastrophic illness. "Every company in the world is waiting for this decision," says Chip Rowan an attorney with the AIDS Legal Project in Atlanta who is representing the Storehouse employee. "If Storehouse wins, then more companies will start imposing caps at the time of claims."

### **Large Lifetime Tab.**

The impact of the two decisions could go far beyond AIDS, which afflicts only a small percentage of company employees. "The principle can apply to any medical problem that a person has, whether it be cancer or Alzheimer's disease," says Robert L. Liebross, an attorney with the American Association of Retired Persons, which has submitted a brief supporting McGann. "People who believe they are covered will find that they aren't."

That's what happened to McGann. His medical bills far exceed the \$7,000 a year he gets in Social Security disability and wages from his part-time job at H&H. And that's just the start: The average lifetime tab for treating AIDS is \$75,000 according to the federal government.

The bills have been far higher for Storehouse. Like a growing number of businesses, the home-furnishings company was self-insured, paying employee medical bills directly. But it carried what's known as stop-loss insurance to take care of bills above \$25,000. In 1988, Richard Owens, now 37, was diagnosed with AIDS, and the company's health plan shelled out \$250,000 for his care.

But in March 1990, insurer Jefferson Pilot Corp. proposed a big boost in the company's stop-loss premium. So Storehouse dropped the backup coverage and set a \$25,000 lifetime cap on AIDS benefits. The company did spend an additional \$90,000 for Owens' treatment, but in October told him the payments would end. Storehouse attorney **Richard L. Robbins** says the company couldn't afford to continue its plan for all 100 workers if it paid the full cost of AIDS claims.

Attorneys for Owens, however, argue that Storehouse violated the federal Employment Retirement Income Security Act (ERISA) of 1974, which bars discrimination against beneficiaries who exercise their rights under a benefit plan. They contend Storehouse singled out particular individuals by writing them out of AIDS benefits after they filed claims.

AIDS-benefit caps would be illegal in most states if the companies were covered by group policies sold by insurance companies, which are regulated by state law. Texas, for example, prohibits policies from setting AIDS coverage limits that differ from those on other diseases. And Georgia bans caps on any disease. "We felt that [allowing caps] was not the right thing to do," says Stanley L. Miller, an assistant director at the Georgia insurance commissioner's office.

### **Request Denied.**

Self-insured companies are exempt from state law but are subject to ERISA. H&H Music, which had been covered by a policy sold by General American Life when McGann first started filing claims, imposed the cap on AIDS after it switched to a self-insured plan. "It's illegal under ERISA to terminate employees to prevent them from having benefits," says Mark A. Huvar, H&H Music's lawyer. "But we never terminated Mr. McGann. We terminated the plan, and a self-insured company can offer whatever benefits it wants."

McGann lost the first round in federal court in June, and the U.S. Court of Appeals in New Orleans is expected to decide soon whether to hear his appeal. Like H&H, Storehouse has won its early rounds in court. On Oct. 22, a federal judge ruled that Storehouse had a "legitimate business reason" for capping coverage and was entitled to do so. He denied Owens' request for a temporary restraining order. Owens' lawyer is pursuing the case.

Whatever the courts decide, the question of who should foot the soaring bill for catastrophic illnesses is sure to set off a lengthy and heated policy debate. To this question, AIDS patients McGann and Owens have an urgent plea: Decide please . . . and soon.