

Massachusetts Secures Record Judgment Against Insurance Companies

Paul L. Singer, Abigail Stempson, Beth Bolen Chun, Salim Rashid

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On the brink of the new year, the [Massachusetts Attorney General's Office](#) (MA AGO) secured a landmark [\\$165 million judgment](#), including civil penalties and restitution, against three UnitedHealth insurance companies: HealthMarkets, Inc. and its subsidiaries; The Chesapeake Life Insurance Company; and HealthMarkets Insurance Agency Inc. (formerly known as Insphere Insurance Solutions, Inc.) (collectively Defendants). The Suffolk Superior Court found Defendants liable for violating a prior consent judgment and engaging in false and deceptive practices. The judgment is thought have largest civil penalty ever imposed in an action brought by the MA AGO under the state's Consumer Protection Act.

There is a long history behind this matter. In 2006, in a prior case, the MA AGO sued companies related to the current defendants for deceptive and unfair practices in the sale of health insurance policies. The resulting 2009 consent judgment prohibited these companies and their subsidiaries from selling health benefit plans in Massachusetts for five years and permanently banned them from using false or misleading advertising. In 2020, the MA AGO filed suit against Defendants for contempt for violating the 2009 consent judgment and for continuing unfair and deceptive acts and practices. The alleged continuing acts and practices at issue in the case included:

- False and deceptive advertising related to bundling of products and to health programs such as healthcare sharing ministry programs
- Marketing and selling specified disease insurance as a substitute for major medical health insurance
- Training and permitting agents to falsely hold themselves out as duly licensed "insurance advisors"
- Training and permitting agents to falsely tell consumers they represent all insurance carriers

The court did not impose civil penalties for all of the aforementioned due to lack of evidence and/or the Defendants acting in good faith. The court did, however, impose civil penalties of \$115,142,000 for bundling practices, webpages that contained false representations that agents provided "objective guidance and solutions," an automated form email that stated agents could offer "a wide variety of options from several highly rated companies," and agents claiming they represented all insurance carriers in Massachusetts. The court further ordered payment of \$50,095,562.07 in restitution based on Chesapeake's receipts for supplemental health policies sold, offset by refunds and claims paid to consumer under the policies. Injunctive relief was not addressed at the trial, which was limited to the issues of damages, and will be addressed at a future hearing.

UnitedHealthcare, UnitedHealth's insurance subsidiary, [has announced](#) its intention to appeal the decision, which it said is "clearly unsupported by the evidence and contrary to established Massachusetts law."

This case not only underscores the steep penalties and restitution that can be awarded pursuant to state consumer laws, but also that regulators are on the lookout for settlement agreement compliance. When a company settles with a state, the matter is far from over; compliance with injunctive terms is a must or a company may face contempt, new litigation, and steeper penalties. And be aware that the type of the settlement (consent judgement, assurance of voluntary compliance, etc.) may also impact compliance risks. Of note, while Massachusetts' and other state consumer laws apply broadly to insurers, some state consumer laws exclude insurers or have gaps in scope, and in still others, the applicability of the law to insurance is unresolved. To learn more about state consumer laws and stay up to date on AG consumer protection news, subscribe to [Kelley Drye's AG Chronicles](#).