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FRONT PAGE STORY

Doctors Will Get Refunds on Insurance

Firm Agrees to Repay Possibly $50 Million for Overcharges

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In a landmark settlement reached after three years of negotiation, Travelers Insurance Co. has agreed Thursday to pay a group of about 5,500 Southern California doctors what could amount to almost $50 million in reimbursements of payments they made for medical malpractice insurance.

As part of the agreement, announced Thursday, Travelers turned over $18.6 million immediately to the doctors' group.

The agreement settled out of court a lawsuit filed in Los Angeles Superior Court five weeks ago by members of the Southern California Physicians Council (SOCAP), charging that the insurance firm, through its Phoenix Insurance subsidiary, grossly overcharged them when it suddenly hiked their malpractice premiums 327% in 1976.

Negotiations Failed

The suit was filed after the three-year-old negotiations between the doctors' group and the insurance firm bogged down last year. The negotiations were launched when it became clear that the insurer was collecting millions more in premiums than it needed to cover the cost of claims.

The huge premium increase by Travelers was a prominent part of what was known as the "medical malpractice crisis" in California in the mid-1970s. At that time, a ballooning of malpractice awards in lawsuits was followed by massive increases in premium charges by a variety of insurance companies—leading some doctors to engage in a work slowdown, some to go without insurance and many to raise their charges to patients by as much as 30% to cover the higher cost of the premiums.

Patients Won't Share

Patients, however, will not receive—at least not directly—any share of the reimbursements to the doctors. Dr. Edward Zalta, president of the Los Angeles County Medical Assn., said he was issuing a statement to each physician receiving a refund "to return it to your patients in the only practical way you can—by continuing to hold the line on fees."

How much individual physicians will receive will depend on how much they paid in premiums and how long they were insured under the Travelers policies.

Viewed in hindsight, said William Shernoff, the Claremont attorney who represented the physicians counsel in the lawsuit, the malpractice furor was a "phony crisis." The total premiums collected from the SOCAP over the five years of the contract were about $132 million.

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while, by the beginning of 1980, the total eventual payout on claims was projected to be only $91 million.

"It's very simple," Shernoff said. "They made excessive profits and now they have to disgorge them. It's the first time that an insurance company has in effect acknowledged overcharges by agreeing to pay back such sums to policyholders."

Travelers disputed that summation. "At the time the rates were made," said its legal counsel, George McKeon, "based on the experience and underwriting projections of that time, it looked like the medical malpractice problem was going to be very serious. Then it plateaued though now it's on the rise again."

It will take several years to determine how much more, beyond the initial $18.6 million payment, Travelers must pay the doctors. Since malpractice claims have a "long tail"—with claims coming in years after injury, and suits and judgments lagging further behind yet—the settlement calls for the rest of the money to be paid out over about 10 years, depending on the claims experience and amount of funds expended in each coming year.

The doctors estimate the total amount of the eventual refund at approximately $46 million. Travelers points out that claims experience of the next few years are unpredictable, and thus the figure could be less.

The settlement, however, may be used as ammunition by those who would like to repeal the Keene Act.

Passed in 1975, the act was aimed at controlling claims and hence insurance costs by setting limits on malpractice suits—a $250,000 ceiling on recovery for pain and suffering, for example, and a three-year statute of limitations.

The settlement will almost certainly spur further suits against insurers, perhaps including Travelers. Already a group of 2,000 doctors in Northern California is considering such a suit, having held a similar contract with Travelers.

At the very least, Shernoff contended, "future requests for premium increases from insurance companies would be better investigated."

Travelers had initially announced a rate increase of 486%. California's Department of Insurance found that excessive but allowed the 327% boost.

According to the doctors' lawsuit, Travelers agreed to put any excess money earned on the insurance program into a fund for return to them. By late last year, however, Travelers had not paid back any money.

Moreover, the suit said, the doctors had "received intimations" that Travelers intended to "retain the entire fund unless it could be used to reduce future premiums"—a difficult maneuver because Travelers had already announced it would not be renewing the program.

Travelers had no such interim, McKeon said, and planned "to return the fund to the doctors . . .". All the discussions were to determine whether the way we calculated the fund and the way we returned it were mutually agreeable."

But on Dec. 31, the doctors filed their suit, asking for refund of the excess money, plus interest, and $1 billion punitive damages. The settlement disposes of that suit.