



# Solomon v. Aetna U.S. Healthcare, 570 Pa. 688 (Pa. 2002)

Topics Covered: Payment Issues (for Physicians), Prompt Payment Laws

**Outcome: Very Unfavorable**

## Issues

The issues in this appeal were (a) whether physicians could bring a lawsuit on their own behalf under the Pennsylvania Healthcare Act ("Act 68") to receive interest on untimely payments from a health insurance company and (b) whether physicians had an implied contractual right to receive such interest.

## AMA Interest

The AMA supports fair policies and practices regarding payment for physician services.

## Case Summary

This case was brought as a purported class action on behalf of physicians and other health care providers practicing in Pennsylvania who had signed participation contracts with Aetna U.S. Healthcare. The complaint alleged a variety of contractual breaches, including failure to reimburse pre-approved medical services and failure to pay claims in a timely fashion. The complaint sought interest on late payments pursuant to Act 68 and pursuant to an implied right under the participation contract.

The trial court dismissed a number of the claims on motion and held, via a summary judgment, for the defendants on the remaining claims. The court noted that the alleged unpaid amounts were, by admission of the plaintiffs, in fact paid. The court further found that a private physician, acting on his own behalf, could not seek interest on these late payments in a lawsuit. The court held that Act 68 allows interest charges only at the order of the Pennsylvania Insurance Commissioner, which had not happened here. Furthermore, the court held, the provider contract neither explicitly nor implicitly promised to pay interest charges.

The plaintiff physicians appealed to the Superior Court which affirmed, holding, among other things, that physicians do not personally have the right to sue for the late payment interest that the Pennsylvania statutes require be paid to them.

The plaintiffs then asked the Pennsylvania Supreme Court to hear the case. However, the Pennsylvania Supreme Court denied the petition for review, concluding the lawsuit.

## **Litigation Center Involvement**

The Pennsylvania Medical Society and the Litigation Center filed an amicus curiae brief in the Superior Court in support of the physicians. The brief argued that an implied private right of action should be found under Act 68.

The Litigation Center, along with the Pennsylvania Medical Society, also submitted two amicus curiae briefs to support the physicians' request for appeal in the Pennsylvania Supreme Court. The first brief pointed out that 47 states have laws governing prompt payment of medical claims, and some of the courts interpreting their state laws have resolved the private right of action issue differently from the Pennsylvania Superior Court. The second brief advised the Supreme Court of a recent decision by the United States Supreme Court, to whom the Pennsylvania Supreme Court has traditionally looked for guidance, which sets forth new criteria to establish the viability of an implied private right of action. Thus, this matter is of great national importance, and the issues are unsettled. Both considerations were offered as reasons for granting Supreme Court review.

Pennsylvania Superior Court brief

Pennsylvania Supreme Court initial brief

Pennsylvania Supreme Court second brief