

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

Westside EKG Associates,

Plaintiff,

CASE NO.: 01-016184 (07)

Vs.

Foundation Health, a Florida

Health Plan, Inc., et al.,

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Westside EKG Associates,

Plaintiff,

CASE NO.:: 08-030982(07)

Vs.

Blue Cross and Blue Shield of

Florida, Inc.,

Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

This action is before me on Plaintiff Westside EKG Associates (Westside) Motion for Class Certification. I have considered the Motion, the Memoranda, the arguments of counsel, the evidence presented in support and in opposition to the Motion, and the record. For the reasons set forth herein, I find and conclude that the Motion must be denied.

Westside has filed this action asserting claims that the defendant insurers wrongfully delayed payment of claims and failed to remit required interest on those claims. Damages are sought either for interest or payment of full billed charges. Westside's Motion fails to establish critical elements

necessary to demonstrate that class action treatment is superior to individual actions.

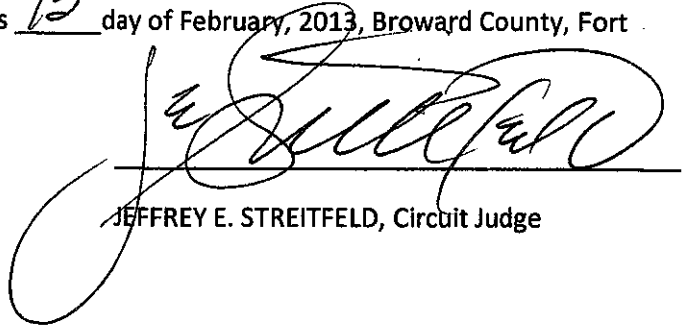
The class definition does not permit the court to reasonably ascertain whether or not any particular individual is a member of the class without a highly individualized merits determination. The same concerns extend to identifying and resolving which providers' claims are subject to arbitration clauses.

Westside has also failed to demonstrate the existence of a common right of recovery based on the same essential facts. There is no evidence of a general practice of systematic failures in the various systems employed by the Defendant insurers over the time periods involved in this action. Individual analysis of claims predominate, making class treatment ineffective. Klay v. Humana, Inc., 382 F.3d 1241 (11<sup>th</sup> Cir. 2004). I am not persuaded that liability can be determined through a bulk analysis of readily retrievable electronic records.

Finally, class actions are preferable when potential claimants need to aggregate claims to ensure that they can effectively seek redress. Here, the damages sought by Westside are substantial. The need for class treatment does not exist, particularly where there is no common pattern of conduct giving rise to potential recovery, and a merits determination will undoubtedly evolve into how each individual claim was processed, taking into consideration the hundreds of codes and communications involved.

For these reasons, Plaintiff's Motion for Class Certification shall be and the same is hereby denied.

DONE AND ORDERED in Chambers, this 13<sup>th</sup> day of February, 2013, Broward County, Fort  
Lauderdale, Florida.



JEFFREY E. STREITFELD, Circuit Judge

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