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Health Care

# Medco Health's 'Aggravating' Case

By Melissa Davis 12/16/05 - 01:12 PM EST

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**Medco (MHS)** could soon find out that cheap cures don't always last.

Until recently, the giant pharmacy benefit manager had expected to pay \$42.5 million to settle a major class-action lawsuit. But an appeals court ruling will force a federal judge who presided over the case to re-examine the deal, raising the prospect that the settlement could collapse.

Medco has been accused of improperly favoring expensive drugs, especially those sold by former parent **Merck (MRK)**, and then pocketing manufacturer rebates that should have gone to its clients instead. The \$42.5 million settlement was negotiated three years ago, with Medco admitting no wrongdoing. Medco says it settled only to put the legal expense and burden involved behind it.

But the settlement hasn't ended the controversy over the case. The appeals court has challenged the legitimacy of some plaintiffs who settled on behalf of some 815,000 health plans in the suit. Four of the plaintiffs are simply individuals, the court points out, who have not shown that they were personally injured by Medco's alleged misconduct. And a fifth, it notes, is a health plan that has so far failed to prove that it ever had a contract with the big PBM.

The sixth plaintiff, a trustee for the Blumenthal Print Works represented by attorney Linda Cahn, has from the beginning rejected the settlement as inadequate. Meanwhile, 200 other Medco clients have declined to participate in the deal and left the door open for their own lawsuits instead.

Some plaintiffs are clearly hoping they can get more money out of Medco if the settlement is set aside. In a high-profile case that went to court earlier this month, the *Cincinnati Enquirer* has reported, a single health plan -- the Ohio state teacher retirement system -- is seeking \$152 million in damages from Medco based on

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allegations resembling those levied in the class-action complaint. In the meantime, the federal government has already secured \$137.5 million from a Medco competitor in another similar case.

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