

Testimony of Mark T. Vuono, President-Elect
Allegheny County Bar Association

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My name is Mark Vuono. I am a partner in Vuono & Gray, a law firm which has been practicing in Downtown Pittsburgh for 60 years and which focuses its practice on representing family-owned small businesses. I am here today as the President-Elect of the Allegheny County Bar Association and as a representative of its Lawyer Insurance Committee.

The function of the Lawyer Insurance Committee is to review and endorse insurance products that the Bar Association offers to our members. This group of volunteer attorneys meets regularly to provide an important screening function, to assure our members that the endorsed products provide a high degree of quality and value. This service is one of the key benefits associated with membership in our organization. Although we endorse life and disability insurance, auto and homeowners coverage and professional liability (malpractice) insurance, the availability of quality, affordable health insurance coverage is literally the primary reason why many of our members belong to our association.

I have served on this committee continuously for more than 25 years, and like Mr. Hunt, do not profess to be an expert with respect to the health insurance industry. Our committee, however, has been dealing with Highmark and its predecessors for many years and we have some concerns that we want to bring to your attention.

One reason that the Association endorsed Highmark in the past was that it offered coverage to our members without regard to medical history or pre-existing conditions. It was the "community insurer of last resort", offering coverage to all of our members and to the community at large. In exchange for filling this critical role in the marketplace, it enjoyed the tax-exempt status that distinguished it from for-profit insurers. Over the years, it leveraged its status to become the dominant player in the health insurance marketplace in Allegheny County and accumulated massive reserves under its not-for-profit umbrella.

In more recent years, UPMC has emerged as a significant competitor to Highmark in the health insurance market, in addition to assembling a large network of hospitals and medical providers in our region. Access to the UPMC network, which includes many of the top hospitals and specialists in the region, has been a key component of the insurance coverage we have provided to our members through Highmark.

In the past, Blue Cross and Blue Shield offered group coverage to our members based on the overall experience of the group as a whole, with each member paying the same price for coverage without regard to the age, gender, or most importantly, medical condition or history of the member or his covered employees and family members. The risks were spread across the entire pool of insureds, just as if our solo and small firm members were employees of a large employer. The committee received reports of the group's overall claims experience compared to premiums paid and the Blues' overhead and profit. In those days, we literally negotiated the premium rates on behalf of our members. We even

had the opportunity to carry over favorable results from one year to reduce the premiums that our members would pay in future years.

The "small-group" market covered by Highmark consists of firms from 1-50 individuals or families, including not only lawyers, but also secretaries, paralegals and other employees, and the same definition applies to small and family businesses other than law firms. Over 60% of our members practice in "small" firms of 6 or fewer attorneys. Of those firms, approximately 35% are sole practitioners, single member law firms. At one time, Highmark proposed to eliminate coverage for sole practitioners or "groups of one." Our Association complained to the Insurance Department, and under pressure, Highmark backed off and reluctantly continued to offer coverage to single-member firms.

Significantly, Highmark is the only insurer offering group coverage to groups of one, *i.e.*, the sole practitioners who are such a large and important segment of our membership. UPMC (as well as Aetna, United Healthcare, CIGNA and Health America) define the small-group market as firms of **2-50**, not offering any coverage to solo's. The competition from the for-profit marketplace also does not offer coverage without medical underwriting and without regard to pre-existing conditions. Thus, because Highmark was the only carrier offering small-group coverage to our entire membership, we had no alternative but to endorse their product in spite of our concerns with certain of their rating practices. Highmark is the only health insurance provider offering coverage to individuals on either a group basis or by direct pay programs. UPMC and the other for-profit carriers do not offer either alternative. Therefore, there simply is no other game in town for our solo's.

Last year, when Highmark moved its small-group business to its for-profit subsidiary, Highmark Health Insurance Services, last year, it indicated that it might eventually follow the other carriers and eliminate coverage for solos, but it has not done so up to this point. Although Highmark thus far has continued to offer coverage to solo's, it considers "firm size" to be a demographic factor that impacts claims experience and therefore the premiums that are charged. Personally, I have never understood why a sole practitioner should constitute a greater (or lesser) health risk than the same attorney practicing in a firm of 2 or 10 or 50 or 100 attorneys.

As we testified last year, our smaller firms and particularly our solo's were disproportionately impacted by dramatic rate increases which effectively priced many of them out of their existing coverage available through the Bar Association, forcing them into less expensive plans with less coverage, higher deductibles, etc. We want to protect the right of our members (or any business owner, for that matter) to choose to pursue his or her professional career as a sole proprietor, without regard to the cost of health insurance. This discrimination against solo's and small businesses jeopardizes their ability to practice law, or to conduct any business, as a sole proprietor.

Now that the transfer of its small-group coverage to a for-profit entity is complete, Highmark is not subject to any restrictions on medical underwriting or predictive modeling. Although Highmark asserts that it is not medically underwriting existing customers at this time, it continues to use so-called predictive modeling to determine its rates, which still appears to us to be a distinction without a difference. Last year, it

appeared that Highmark had selectively increased the premiums of solo practitioners in an effort to drive them out of the Bar Association group health insurance plan.

Since there are no alternative health insurance providers willing to provide group coverage to individuals in Western Pennsylvania, the only option for our individual members is to withdraw from the Bar Association group plan and convert their coverage to a "direct pay" program. It seems that Highmark is trying to accomplish indirectly what it tried to do years ago: to effectively deny sole practitioners the benefit of small group coverage and force them into a direct-pay program.

By allowing Highmark to move its small-group coverage to its for-profit subsidiary, the Insurance Department enabled Highmark to discriminate against our sole practitioner members without any regulatory oversight or protection whatsoever. The people who are being subjected to these prohibitively high premiums are being priced out of the market and have nowhere else to turn.

In short, our sole practitioner members have paid excessive premium increases because Highmark is the only insurer offering coverage. Now, however, with the dispute that is brewing between Highmark and UPMC, it is unclear whether that coverage will provide fully-insured access to the UPMC network of hospitals and providers. Access to hospitals and freedom to choose their physicians and other providers has been virtually unrestricted because Highmark's network has been so broad, including all of the major providers both within and outside the UPMC family. Now that freedom of choice has been threatened by the contract dispute between these two market giants.

We do not take sides in this dispute, nor do we profess to have solutions to bring them together at the bargaining table or even to fully understand the dynamics of their disputes. We simply support freedom of choice in the marketplace for our members and other small businesses, including the freedom to choose their doctors, their hospitals and their health insurance providers. Our members, and particularly our sole practitioners, have not enjoyed the option to choose a health insurance carrier in an open insurance marketplace, and we believe that this has inevitably resulted in higher costs and reduced benefits. Now, however, the stakes are even higher. Not only are we limited to a single insurance provider, it appears that our only available insurance option may not provide us with access to the UPMC hospital and doctor network. We face the specter of loss of choice in the health care that is available because UPMC and Highmark are not even talking to each other about negotiating a contract extension.

For the moment, our members are waiting for a resolution of this dispute. In the meantime, we are not even certain whether full access to the UPMC network will disappear in 2012 or 2013, since the two sides seem to be unable to even agree on when their contract expires. Added to that is the uncertainty of how the complete overhaul of the health insurance system enacted by Congress will affect us when it becomes effective. What we know for certain is that it is unfair for our community to be held hostage while Highmark and UPMC refuse to negotiate in good faith.

As Mr. Hunt has stated, our small and solo firm members are representative of small businesses in the broader business community. The role of small business in generating job growth and leading our economy out of the recession is well established. These

family firms do not have the time or expertise to take on market giants like UMPC and Highmark. Our members in the past have turned to us for help and protection, and I believe that we have provided a valuable benefit to them. Recent developments, however, have undermined our ability to prevent arbitrary and discriminatory rate practices and to continue to provide the best and broadest choices of health care services for our members.

We are frustrated, and therefore we turn to the legislature and to the Insurance Department to stand up for small business. We want to assure that our members and other small businesses throughout the Commonwealth will have access to affordable group health insurance which provides freedom to choose the hospitals and physicians who will provide them with the finest medical care available. We want our members to be able to continue to be treated by the same doctors who have provided their care in the past. We want to protect our members from being caught in the crossfire of a war of attrition between two or Western Pennsylvania's financially strongest and largest corporate giants. We want you to take action to promote choice and access, in both the insurance and medical care industries, so that our community can benefit from the world-renowned health care system that has developed here.

Thank you for allowing us to appear at this public hearing and for the opportunity to present this information.