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How We Got a \$9.4 Million Verdict: Hired Days Before Trial, Texas Attorneys Help Clinch Victory

Texas lawyers who won a \$9.4 million verdict for their client, an emergency room doctors' group, said that certain testimony and evidence in the trial swayed the jury to their side.

By **Angela Morris** | August 20, 2020 at 03:36 PM



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Hired just six days before a trial that ended with a \$9.4 million verdict for their client, two Texas attorneys said their trial prep was like “drinking from a fire hose.”

In one of the first jury trials in Arkansas since the COVID-19 pandemic hit, John Zavitsanos of Houston and Collin Kennedy of Frisco, a Dallas suburb, represented an emergency room doctors’ group, Southeastern Emergency Physicians, that won the big verdict from insurance companies that underwrite and administer Ambetter health care plans.

The doctors’ group alleged the defendants had breached an agreement to pay the doctors 75% of their bill for services, instead reimbursing them the super-low rates given under Medicaid or Medicare, Zavitsanos said.

The jury verdict found the doctors’ contract applied to the health plans at issue, and determined the damages were \$9.43 million.

“We got exactly what we were asking for,” Kennedy said. “That was literally what was required of them to pay under the contract.”

It was beneficial to be representing emergency room doctors in the era of COVID-19, said Zavitsanos, managing partner in Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing. Jurors “were going to be very attentive to that situation,” he said.

The defendants were NovaSys Health Inc., Celtic Insurance Co., which underwrote and administered the Ambetter health plan, and Centene Corp., the parent corporation of the other defendants.

Steve Cady, partner in Williams & Connolly in Washington, D.C., who represented the defendants, responded to a request for comment by emailing a statement from a spokesperson of NovaSys.

“We disagree that NovaSys breached the contract, and we plan to appeal. All of the health insurance claims at issue have already been paid at the appropriate rate for ACA claims,” said the statement.

The second amended petition was filed under seal and not available on the court docket. Zavitsanos said it added the breach of contract claim that ended up winning the verdict.

He said the ER doctors’ group had a 2011 contract with Centene that said the insurer would pay the doctors 75% of their billed charges. The question was: Did the 2011 contract apply to 2014 health insurance policies under the Affordable Care Act, said Zavitsanos.

In their Feb. 3 answer, the defendants denied the allegations in the lawsuit, including denying that they breached a contract. Among other things, the defendants also argued that the Affordable Care Act barred the lawsuit. They claimed the contracts between Celtic and its insureds governed the subject of the litigation, and they should bar the ER doctors’ suit and remove the doctors’ standing to sue.

Influential Evidence

The plaintiff called seven witnesses to the stand. Zavitsanos said two Centene executives that he called as adverse witnesses really helped the plaintiff’s case.

“I thought the admissions we got from them, they were the deciding factors in winning the case,” he said. “Essentially, they wrote the agreement, and the contract was not limited to a particular product, it was not limited to a particular year, and it was not an unreasonable reading that it would apply to future products.”

Between both sides, there were 250 exhibits introduced at trial, he noted.

Kennedy, managing partner in Hanshaw Kennedy Hafen in Frisco, said one of those documents made a big impact with the jury.

In an email in 2016, the physician's group asked Centene employees for a copy of its contract with the insurer, Kennedy said. In an internal email, Centene executives told their employees not to send the contract, and to stop communicating with the doctors' group, he said.

"The jury felt that was extremely deceptive," he explained. "I think that was the turning point."

Kennedy said the COVID precautions that the judge put in place made everyone feel comfortable.

"We kind of forgot that it was going on," he said about the pandemic.