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ALM

BIG

SUITS

JOHN JACOB (AKIN GUMP)



IN RE MEDICARE REIMBURSEMENT LITIGATION

In the largest single reimbursement payout by Medicare, the federal government agreed March 11 to pay \$666 million in back payments to 667 hospitals.

The case stems from the government's interpretation of a 1986 law that governs how hospitals are reimbursed for serving Medicare-eligible patients. The law stated that hospitals serving largely low-income patients were entitled to a higher rate of reimbursement from the government. In determining reimbursement rates, however, a question arose about how to account for Medicare-eligible patients who used an alternative provider or payment method for their hospital stay.

In 1997 the Centers for Medicare & Medicaid Services, a U.S. Department of Health & Human Services agency, ruled that it would count all Medicare-eligible patients, including those who used other payment providers, when determining each hospital's reimbursement rates. But the ruling did not apply retroactively, prompting Monmouth Medical Center and Staten Island University Hospital to file suit a year later in federal district court in Washington, D.C., seeking additional reimbursements back to 1994.

The two claims were consolidated on appeal and in 2001 the U.S. Court of Appeals for the D.C. Circuit upheld a ruling in favor of the hospitals, ordering the government to reimburse both for claims dating back to 1994.

More hospitals then jumped into the litigation. Roughly 250 suits were filed in 2002 and 2003, adding up to 2,500 years of unreimbursed Medicare claims. Potential damages totaled \$2.8 billion, according to the government's U.S. Supreme Court

brief. U.S. district court judge Paul Friedman consolidated the suits in federal district court in Washington, D.C., in 2003.

Baystate Health, the first filer, was selected as the lead case. In 2004 the D.C. federal district court ruled for the hospitals, a decision that was subsequently affirmed on appeal in 2005. The Supreme Court denied certiorari and in May 2006 the government approached the hospitals to discuss a global settlement. After 22 months of negotiations, both between the hospitals and the government and among the hospitals themselves, the deal was struck.

FOR PLAINTIFF BAYSTATE HEALTH (SPRINGFIELD, MASSACHUSETTS)

VINSON & ELKINS: Dennis Barry, John Faust, Christopher Keough, and counsel **Stephanie Webster**. (All are in Washington, D.C.) Keough led the Baystate litigation. The firm also represented 130 other nonprofit hospitals around the country.

FOR PLAINTIFFS' COORDINATING COUNSEL

AKIN GUMP STRAUSS HAUER & FELD: John Jacob, Edward Lazarus, Jorge Lopez, Jr., David Palmer, counsel **Elizabeth Goldman**, and associates **Jamie Anderson** and **Kelly Maxwell**. (Lazarus is in Los Angeles; the rest are in Washington, D.C.) Jacob acted as lead negotiator with the government. The firm represented 70 hospitals, many of which were existing clients the firm approached about filing claims after the Monmouth decision.

CROWELL & MORING: Barry Cohen, Clifton Elgarten, Kent Gardiner, Robert Roth, Daniel Sasse, and associates **Robyn**

Aronberg, Robyn

Diaz, Amy Lee,

Arathi Murthi, and Chandra Snyder.

(Sasse is in Irvine, California; the rest are in Washington, D.C. Aronberg, Diaz, and Murthi are no longer with the firm.) The firm represented 86 hospitals and filed some of the first cases in late 2002. Roth also successfully represented Monmouth Medical Center.

HONIGMAN MILLER SCHWARTZ AND

COHN: Kenneth Marcus. (He is in Detroit.) Marcus filed one of the first complaints for a hospital in Kansas in late 2002. He represented 40 hospitals altogether. Some of the hospitals were existing clients, and others retained him on the recommendation of Quality Reimbursement Services, Inc., a national consulting firm.

REED SMITH: Murray Klein, counsel **Jacqueline Bennett**, and associate **Steven Roosa**. (Bennett is in Washington, D.C.; the rest are in Princeton.) The firm represented 160 hospitals.

FOR DEFENDANT UNITED STATES OF AMERICA

IN-HOUSE: For the U.S. Department of Justice: **Sheila Lieber**. For the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services: deputy associate general counsel for litigation **Mark Polston**.

—FRANCESCA HEINTZ

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