

# Daily Journal

FEBRUARY 15, 2017

## TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

### TOP PLAINTIFFS' VERDICTS BY IMPACT

## Aetna Life Insurance Co. v. Bay Area Surgical Management LLC

#### case INFO

#### Insurance fraud

Santa Clara County

Superior Court Judge Patricia M. Lucas

**Plaintiff lawyers:** Gibson, Dunn & Crutcher LLP, Richard J. Doren, Gareth Evans, Ethan Dettmer, Heather Richardson, Dana Craig, Beth Coombs, Michael Holecek, Alex Swanson, Sloane Rosenthal, Caitlin Dudley, Jennifer Bracht; Aetna Life Insurance Co. Office of General Counsel, Edward Neugebauer, Paul Weller, Laura Jackson Coury; Elliott Greenleaf, Fred Santarelli; Sprague & Sprague, Richard Sprague, Joseph Podraza, Jordann Conaboy; Berman DeValerio, Joseph J. Tabacco Jr., Christopher T. Heffelfinger, Matthew D. Pearson

**Defense lawyers:** Doll Amir & Eley LLP, Michael M. Amir; Chadbourne & Parke LLP, Abbe Lowell; Arnold & Porter Kaye Scholer LLP, Jerome B. Falk Jr.; Hanson Bridgett LLP, Merton A. Howard; Horvitz & Levy LLP, David S. Ettinger; Law Offices of Nicolas Lezotte, Nicolas M. Lezotte

Aetna sued a group of San Francisco Bay Area surgery centers for overcharges submitted through a sophisticated scheme of insurance fraud. Plaintiffs' lawyers said it is a fraudulent business model that is increasingly common across the country, involving in-network providers taking ownership interests in out-of-network ambulatory surgical facilities, then referring patients with out-of-network benefits to the facilities. That can benefit the facility from both patient volume enjoyed by the referring physician and the higher reimbursement amounts paid by many health plans.

"Through the course of the trial, the defense tried to make my large insurance company client out as a bully," said Doren. "But we had a witness, a patient at one of the centers who had a knee operation and was told his financial responsibility would be small. Then he learned the center charged tens of thousands to Aetna. The center told him not to worry, because the center would take whatever Aetna paid. He was incensed, and the jury was impressed that he came in to tell his story. He even came back for closing arguments.

"The jury saw through it the scheme. The jurors had seen health care costs go up for everyone and wanted to put an end to it."

Doren said the case settled post-verdict for \$40 million, allowing the defendant to avoid a potentially much higher punitive award. "They have paid \$20 million to date, and the



RICHARD J. DOREN

rest will come over a couple of years."

The outcome wasn't certain. "The jury did come in with a suspicion of insurance companies," Doren said. "But by the end they could see we were doing the right thing. When the judge started reading the verdict and it was clear that the jury had found against the defendant, I felt the client behind me reach up and put his hand on my shoulder. That was a wonderful moment"

— John Roemer