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Texas creditors awarded $222 million in HMO case; La., Okla. claims next

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Texas creditors trying to get bills paid from a failed HMO were awarded $222.2 million in damages Thursday after a Baton Rouge jury found that HealthNet of California created the problem by engaging in deceptive practices.

The jury deliberated for four hours before coming up with a damage award of $52.4 million against HealthNet of California.

Attorneys representing creditors said after court that Texas law requires that damage awards triple if an insurance company engages in deceptive practices. As a result, jurors also tacked on $65 million in punitive damages, which are allowed under Texas law.

"I'm stunned," said Jean Johnson of Dallas, selected to represent the creditors in Texas. "This is a resounding victory."

The award followed a two-week trial. The damages will go to pay claims made against the Texas HMO.

Baton Rouge attorney Jerry McKernan, representing the Texas creditors, said his clients appreciate the jury's verdict.

"We hope it sends a proper message to HMOs across the country that they should not mistreat patients and health-care providers," McKernan said.

HealthNet's attorney, Jim Percy of Baton Rouge, declined comment after court.

State District Judge Janice Clark will now decide whether HealthNet of California must pay millions more to cover claims made in Louisiana and Oklahoma.

Claims in those states could add another $45 million against HealthNet, a california company with a net worth of $500 million, according to testimony on Thursday.

Clark did not rule Thursday.

Michael Adams, director of litigation for the Louisiana Receivership Office, said it was determined that the case should be tried in Louisiana after the insurance commissioners from each state met and decided on a course of action.

"Everybody wanted to try this case in their own back yard," Adams said.

At issue was whether HealthNet had any responsibility for claims made against three HMOs it sold on April 30, 1999.

HealthNet maintains that after it sold the HMOs to AmCare, it no longer had any control and should not be responsible for any problems created by the company that purchased and ran the HMOs.

The three HMOs were Foundation Health Plans of Louisiana, Texas and Oklahoma.

HealthNet retained 47 percent ownership in the companies.

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Attorneys trying to recover money owed to physicians and others for their services maintain that HealthNet knew that the HMOs would fail when they were sold to Tom Lucksinger of Texas and a newly formed company, AmCare. Those HMOs became AmCare of Louisiana, Texas and Oklahoma.

Receiverships have been established in the three states to try to recover money to pay money owed by the HMOs.

Attorneys representing the receiverships estimate that $52 million is owed in Texas, $15 million owed in Louisiana and $30 million owed in Oklahoma.

The Baton Rouge jury awarded $52.4 million in the Texas case, but found that HealthNet "knowingly engaged in deceptive practices in the insurance business," said Jim George, an attorney from Austin representing Texas creditors. He said the deceptive practices took place when the company advertised that it was solvent and filed false reports with Texas insurance officials.

McKernan said in his closing argument to jurors that months before the deal took place, HealthNet had a plan to unload the unprofitable HMOs.

"They were dirty from the beginning," McKernan said.

He said HealthNet now is trying to blame everyone but itself instead of "stepping up to the plate and taking their medicine."

"They knew the consequences, they took the risks and now they have to pay the piper," McKernan said.

Part of that plan involved transferring $8.4 million from the HMOs to HealthNet on May 3, 1999 — three days after the sale took place.

The attorneys for the receiverships maintain that the $8.4 million was supposed to pay for future expenses of the three HMOs.

Percy, the Baton Rouge attorney representing HealthNet, said in his closing argument that the deal was approved by insurance regulators in three states. That deal included HealthNet getting the $8.4 million, a fact not hidden from the regulators that was included in the contract.

"HealthNet sold the companies. Money changed hands. Stocks changed hands. Plans changed hands," Percy said. "There is no evidence of a sham transaction.

"This is a sale of those companies and that's exactly what transpired," Percy said. He said the damages that resulted in the unpaid claims occurred after HealthNet sold the companies.

Percy said HealthNet was not informed of any financial problems with the sold HMOs until two years after the deal took place. Percy said that Lucksinger came up with the story that HealthNet had agreed to step in and help cover the claims.

"HealthNet never made such a commitment," Percy said.

Percy urged jurors not to add any punitive damages against his client. He said the award has already "shaken" his client.

"You have spoken loudly and clearly," Percy said. "Message delivered."

McKernan told jurors that punitive damages were appropriate because HealthNet acted with malice and gross negligence. He told jurors that the purpose of awarding punitive damages was to send a message and prevent like actions in the future.

"Hopefully it sets an example to them as well as the rest of America," McKernan said.