

Feds Settle Huge Whistleblower Suit Over Medicare Advantage Fraud

MedCity News [reports](#) that one of the nation's largest dialysis providers will pay \$270 million to settle a whistleblower's allegation that it helped Medicare Advantage insurance plans cheat the government for several years.

[Fred Schulte](#) explains:

The settlement by HealthCare Partners Holdings LLC, part of giant dialysis company DaVita Inc., is believed to be the largest to date involving allegations that some Medicare Advantage plans exaggerate how sick their patients are to inflate government payments. DaVita, which is headquartered in El Segundo, Calif., did not admit fault.

[Read the MedCity News article.](#)

'Evasive Discovery Tactics' Cost Lead Plaintiff Against Sanofi

Bloomberg Law [reports](#) that a plaintiff in a bellwether products liability case involving the chemotherapy drug

Taxotere was sanctioned for withholding information about her medical history.

Plaintiffs in the case claim Sanofi-Aventis U.S. LLC failed to warn patients that Taxotere could cause permanent hair loss.

Reporter [Michael Greene](#) explains: “Dr. Kelly Gahan, a bellwether plaintiff in the multidistrict litigation, used evasive discovery tactics to avoid revealing information about medical treatment she had received, Judge Jane Triche Milazzo, of the U.S. District Court for the Eastern District of Louisiana, said.”

Gahan did not reveal all the physicians who provided treatments to her over an eight-year period and whether she used any over the-the-counter medications. Now she must pay Sanofi expenses and attorneys’ fees incurred in obtaining the records.

[Read the Bloomberg Law article.](#)

Health Care Fraud: How a Strike Force is Selected for a City

During the latest National Health Care Fraud Takedown, investigators targeted Houston and Dallas to identify and charge more than 40 people with a range of fraud allegations.

How is a region designated as a health care strike force area? Former federal prosecutor and Houston trial attorney [Ashlee McFarlane](#) of [Gerger Khalil & Hennessy](#) explains in a post on the website of [Androvett Legal Media & Marketing](#).

“Dallas is a health care strike force city, meaning the Department of Justice and federal agencies have identified Dallas (like Houston) as a hot bed for health care fraud, based on data analysis and reviewing payments of claims submitted to federal health care benefit programs like Medicare,” says McFarlane.

“Kickbacks are the foundation of almost every health care fraud case. “As a former prosecutor, I can tell you—kickbacks are the first thing agents and prosecutors look for in building an investigation.

“There’s no way to know the number of kickbacks being paid in a city. You have to start investigating a case. However, when there are providers who are outliers in the billing data, federal agents often look to see if kickback payments are used to induce referrals.”

Dallas and Houston are among 10 locations nationwide with Medicare Fraud Strike Force operations. According to the Department of Justice, a Medicare Fraud Strike Force consists of a partnership between the DOJ and Department of Health and Human Services to prevent fraud and enforce anti-fraud laws.

Health Care Attorney Paul Leslie Joins Estes Thorne & Carr

Health care lawyer and former hospital general counsel [Paul Leslie](#) has rejoined Dallas-based Estes Thorne & Carr PLLC as a partner focused on health care regulatory compliance and litigation.

In a release, the firm said Leslie has more than 30 years of experience representing entities in health care-related regulatory, operational and transactional matters, and commercial and business litigation, as well as advising clients on efficient and effective management of in-house legal departments and functions.

He previously practiced at Estes Thorne & Carr and rejoins the firm from Parkland Health & Hospital System where he served as executive vice president and general counsel for eight years. He also has experience as an associate general counsel at another Fortune 500 health care company.

“We have known and worked with Paul for years and are excited to welcome him back as a colleague. His industry experience and understanding of the regulatory landscape are invaluable to our clients in the health care industry,” said managing partner [Jessica Thorne](#).

The firm said Leslie has expertise in developing and implementing cost-effective strategies for health care operators. In addition to his experience with transactions and regulatory compliance, he has worked with board governance, enterprise risk management, contract negotiations and dispute resolution, commercial and whistleblower litigation, false claims investigations, real estate transactions and insurance contract coverage litigation.

“I have known and worked with the Estes Thorne & Carr attorneys for the better part of the last decade and always have been impressed by their legal prowess and their ability to develop strong relationships with their clients,” he said. “Once I had the opportunity to rejoin the firm, I knew this was the right place for me.”

A graduate of St. Mary’s University School of Law, Leslie earned the Magna Stella Award for Outstanding General Counsel from General Counsel Forum in the government/non-profit category in 2016. He is rated AV Preeminent by Martindale-Hubbell, reflecting the highest excellence in legal ability and ethical standards.

Nurse Practitioners, Physician Assistants Receive Class Action Status in VA Overtime Suit

A federal judge has certified a class action lawsuit involving nurse practitioners and physician assistants accusing the U.S. Department of Veterans Affairs of failing to pay overtime since 2006, according to a post on the site of [Androvett Legal Media and Marketing](#).

Judge Elaine D. Kaplan of the U.S. Court of Federal Claims granted certification in an action brought by class

representatives Stephanie Mercier, Audricia Brooks, Deborah Plageman, Jennifer Allred and Michele Gavin on behalf of nurse practitioners and physicians assistants at 85 different facilities across the country.

[Provost Umphrey](#) attorneys [Michael Hamilton](#) of the firm's Nashville office and [Guy Fisher](#) in the Beaumont, Texas, office are among the attorneys working on the lawsuit along with counsel [David Cook](#) and [Clement Tsao](#) of Cincinnati's [Cook & Logothetis, LLC](#), Douglas Richards of Lexington, Kentucky and [Robert Stropp](#) of Washington DC's [Mooney Green, P.C.](#)

"These health care professionals dedicate their time for the well-being of our veterans, and by law, are entitled to overtime when they are required to work beyond their work schedules," said Hamilton. "We believe this lawsuit to be critical for veteran patient safety and health. To expect these employees to work extended hours without overtime pay is wrong. With the class certification, we can now proceed onto the next step in this lawsuit."

The lawsuit seeks compensation for employees who worked overtime processing electronic and computer patient records using VA facility computers, VA laptops and sometimes personal computers, work that is critical to the medical treatment of patients. Nurse practitioners and physician assistants say the work is considered mandatory. Those who failed to complete the assignments were subject to disciplinary measures for poor time management.

"I'm grateful that the judge agreed with us and certified the lawsuit as a class action," said Cook. "It is wrong for any employer to expect people to work for free."

Hamilton and Cook estimate that as many 10,000 VA employees could be represented in the class action lawsuit, according to the Androvet post.

The case is *Stephanie Mercier, Audricia Brooks, Deborah*

Plageman, Jennifer Allred, Michele Gavin v. The United States of America, No. 1:12-cv-00920 in the U.S. Court of Federal Claims.

Jury Awards \$25.75 Million in Talc-Mesothelioma Case Against Johnson & Johnson



Image by [Open Grid Scheduler / Grid Engine](#)

A jury in California delivered a \$25.75 million verdict against the maker of Johnson's Baby Powder for the deadly asbestos-caused cancer a woman developed after years of using the product, according to a post on the website of [Androvett Legal Media & Marketing](#).

The post continues:

The verdict by jurors in Los Angeles Superior Court before Judge Gloria White-Brown includes \$21.75 million in

compensatory damages and \$4 million in punitive damages. Jurors found that Johnson & Johnson was negligent and failed to warn consumers, and that its iconic Johnson's Baby Powder contained manufacturing and design defects because of the presence of asbestos.

Joanne Anderson, 66, of Williams, Oregon, filed suit following her diagnosis with pleural mesothelioma. A cancer in the lining of the lungs, pleural mesothelioma is caused by asbestos exposure. She used Johnson's Baby Powder on her children when they were younger and, as an avid bowler, regularly used the product on her hands and shoes for years. All told, experts estimate she used the product more than 10,000 times.

"It was our great honor to represent Joanne and Gary Anderson in this battle against Johnson & Johnson," said trial attorney David Greenstone of [Simon Greenstone Panatier](#), who was one of the attorneys who tried the case. "We are extremely pleased that our clients have found a measure of justice, although nothing can truly compensate them for what they have lost. Our clients are hopeful that this verdict can further bring light to this unbelievable example of corporate misconduct. Johnson's Baby Powder has contained asbestos for decades. People need to know about this."

The jury found Johnson & Johnson liable for two-thirds of the verdict amount. The remaining percentage of fault was spread among other exposures that Joanne had as a bystander to automotive work her husband occasionally performed. Medical testimony in the case indicated that all of her exposures to asbestos contributed to cause her mesothelioma.

"In 1969, a Johnson & Johnson's company doctor told them that if they didn't get control of the mineral contaminants in their baby powder that they would end up in litigation years later," said trial attorney Chris Panatier, who also represented the family at trial. "Instead of pulling the

powder from the market or going with a safer alternative such as corn starch, they engaged in a multi-decade campaign wherein they hid testing data from the FDA, altered reports to make them more favorable and lied to consumers. This jury saw Johnson & Johnson documents that were never given to the public or the FDA.”

Also assisting in the case was Simon Greenstone Panatier attorney Conor Nideffer.

The verdict is the third cosmetic talc case tied to asbestos that Simon Greenstone Panatier has won on behalf of its clients. In 2015, a California jury awarded mesothelioma sufferer Judith Winkel \$13 million in her case against Colgate-Palmolive, based on her exposure to asbestos in its Cashmere Bouquet powder. The following year, a jury awarded \$18 million to Philip Depoian in a mesothelioma case against talc supplier Whittaker Clark & Daniels.

Anderson’s case is *Joanne Anderson and Gary Anderson v. Borg-Warner Corporation et al.*, No. BC 666513 in Los Angeles Superior Court.

Trump’s Medical Records: Any Privacy Law Violated?

President Trump’s former physician, Dr. Harold Bornstein, recently revealed that the president’s bodyguard and two others came to his office in February 2017 and demanded

Trump's medical records. Was there any violation of laws protecting patient privacy? Is Trump's crew in trouble here?

A post on the website of [Androvett Legal Media & Marketing](#) addressed the issue.

"If the doctor had good reason to believe that this group was authorized by Trump and that the president wanted the records, the doctor is permitted to provide them. He could have refused and demanded an authorization that would meet standards under HIPAA, the law that protects patients' records. He also could have contacted Trump by phone for further confirmation," says [Jeff Drummond](#), a Dallas lawyer with [Jackson Walker LLP](#) who specializes in medical records privacy and HIPAA (Health Insurance Portability and Accountability Act).

A thornier lapse may have been committed by the doctor when he revealed to the *New York Times* that Trump was taking a drug that promotes hair growth.

"That would almost certainly be a violation of Trump's medical privacy rights, and a violation of HIPAA," Drummond said. "With that background, I think it would be fairly easy for Trump to sue the doctor to give up all copies of his records.

"HIPAA rules allow disclosures of medical records to the patient, the patient's personal representative and those who are 'involved in the care' of the patient. It seems unlikely a law was violated by Trump's emissaries taking his records with his permission."

5th Circuit Nixes \$151M J&J Verdict, Cites Plaintiff Lawyer's Alleged 'Deceptions'

DePuy Orthopaedics and Johnson & Johnson will get a new trial after the previous one in 2016 ended with the companies having to pay \$151 million in damages to five plaintiffs with alleged hip replacement injuries, reports the [SE Texas Record](#).

The Fifth Circuit found that plaintiffs' attorney Mark Lanier's "deceptions furnish independent grounds for a new trial" that centered on Pinnacle artificial hips and that the trial court allowed the Houston lawyer to introduce "inflammatory character evidence."

[David Yates](#) reports that Lanier told the *Record* he thought the opinion was "interesting" and that the legal reasoning upholding the various actions against Depuy and J&J are strong and important and will help all future cases.

Lanier said he thought the court misunderstood the issues of monetary representations about the doctors. He added that he plans to seek a retrial.

[Read the Record's article.](#)

Dallas Lawyer Who Planted Niece in Government Job As a 'Mole' Gets 10-Year Max for Medical Fraud

Dallas lawyer Tshombe Anderson had his niece obtain an internship at the U.S. Labor Department so she could snoop through claims files, learn the system and act as a "mole," prosecutors say.

The Dallas Morning News [reports](#) that on Thursday a U.S. district judge sentenced Anderson to the maximum punishment of 10 years in prison and ordered him to pay more than \$26 million in restitution minus what the government has already collected from him.

"Anderson stole patient information from over 200 injured federal workers and then used the information to fraudulently bill OWCP [workers' comp], enriching himself and others with taxpayer dollars intended for the treatment of injured federal workers," said Steven Grell, Special Agent in-Charge for the Dallas Regional Office of the U.S. Department of Labor's Office of Inspector General.

[Read the Dallas News article.](#)

Making Opioid Antidote Widely Available a Key Step in Treatment

Dallas attorney [Jeffrey Simon](#) says U.S. Surgeon General Jerome Adams' call for more Americans to carry the opioid antidote naloxone is one that could save countless lives, and play a key role in addiction recovery.

"Naloxone should be widely available and at the ready for emergency medical personnel, people who are opioid addicts, or people who live with opioid addicts. I equate having naloxone at the ready to having a CPR kit at the ready – both can save lives as emergency care if administered in time," says Simon of [Simon Greenstone Panatier Bartlett, P.C.](#)

"Unfortunately, it's easy for anyone to overdose on opioids, so we are not just talking about saving the lives of addicts. But when we speak of opioid addicts, we need to remember that addiction is a disease. We want addicts to get into recovery, and if they die from an overdose, that can't happen. Keeping them alive long enough for them to make headway with addiction treatment is crucial, and naloxone is often a key component to achieving that goal," he says.

Simon Greenstone and co-counsel collectively represent more than 40 counties in Texas as well as other states in opioid litigation.

The Court is Tiebreaker When Parents Can't Agree

America's favorite sport is at the center of a legal battle between divorced Pittsburgh parents. John Orsini wants their youngest son, who has a history of concussions, to stop playing high school football out of a concern for his safety. However, his ex-wife says their son understands the risks and supports his choice to keep playing. Since the divorced couple cannot agree on terms, the fight has ended up in family court, where a judge has preliminarily allowed the boy to continue to play.

In a post on the website of [Androvett Legal Media & Marketing](#), Dallas family law attorney [Lon Loveless](#) of [Orsinger, Nelson, Downing & Anderson, LLP](#) says when divorced parents cannot agree on issues involving their children, the judge in the case is asked to serve as the tiebreaker. Ultimately, he says, the decision will come down to what is best for the child.

Loveless explains:

“Due to the teen's past concussion history, there is obviously an increased concern about him continuing to engage in contact sports. Although the parents want to be able to make this decision, because they cannot agree, this is a decision that will be left to the court. Even though he is 17, he is still considered a minor and therefore must abide by the court's decision, but it has been my experience that because of his age a judge will most likely consider the boy's input in making his ruling. But ultimately, the paramount issue for the court is what is in the best interest of the child. The court will undoubtedly seek input from medical professionals about the likelihood, and potential long-term impact, of another head injury. That input, not the wishes of either parent, will likely carry

the most weight in this case.”

Monica B. Wilkinson Appointed to Lead Dykema’s Health Care Practice Group

Monica B. Wilkinson, a member in [Dykema](#)’s Detroit office, has been appointed leader of the firm’s Health Care Practice Group. She takes over for Maria Abrahamsen, who held the role for the previous six years.

Wilkinson has more than 30 years of professional experience in health care working with hospitals, physicians, managed care organizations, and nonprofit foundations. She has led cross-functional teams of legal, regulatory, compliance, operations and development professionals. Prior to joining Dykema in 2013, Wilkinson served as Senior Vice President, Assistant General Counsel and Assistant Secretary at the Detroit Medical Center, a multi-hospital academic medical center in Southeast Michigan.

Wilkinson focuses her practice on regulatory and compliance matters, complex contracting issues, medical staff matters, research, and patient care issues. She works with hospital systems, physicians, and a variety of post-acute providers.

Wilkinson is a member of the American Health Lawyers Association and the State Bar of Michigan Health Care Law Section, where she served as Chair in 2010-11. She also sat on the Legal and Operational Policy Committee of the Federation of American Hospitals.

Wilkinson received a J.D. from Georgetown University Law Center and a B.A. from Michigan State University.

Plaintiff Lawyers See Nationwide Settlement As Only End For Opioid Lawsuits

Lawyers who met in a federal courtroom in Cleveland to discuss a settlement of opioid litigation faced the difficult task of crafting a deal that will not only pay their clients – mostly towns and cities – but include states and even the federal government while spreading the cash evenly across the country, [according to Forbes](#).

Contributor Daniel Fisher writes that most of the attendees were private lawyers who have signed contingency-fee contracts with municipal clients.

He adds that “the sheer complexity of the litigation raises questions about how the parties will craft an agreement that ends the threat of further lawsuits against the industry while distributing cash to all the varied entities who have sued.”

But the situation for the self-funded private lawyers is complicated by the involvement of state and federal claims on some of the expected settlement funds.

[Read the Forbes article.](#)

Berkshire's National Indemnity Ordered to Pay \$43 Million for Asbestos Settlement

Berkshire Hathaway Inc.'s National Indemnity Co. has to pay more than \$43 million of Montana's asbestos-related settlement costs, a state judge has ruled. according to a [MarketWatch report](#).

Reporter [Nicole Friedman](#) explains: "Montana had reached a \$43 million settlement in 2009 with people injured by asbestos at a vermiculite mining operation in Libby, Mont. The victims claimed the state had knowledge of unsafe conditions at the mine for decades and failed to protect workers."

National Indemnity provided general liability insurance to the state at the time of the alleged exposure, but it had argued those insurance policies didn't cover the asbestos-related claims.

[Read the MarketWatch report.](#)

Dear Employer, You Could Owe the IRS Millions of Dollars



The first batch of employers are getting estimates from the IRS of penalties they owe for not providing health coverage to employees in 2015. Some of the estimates are in the millions, [reports Bloomberg](#).

Kristen Ricaurte Knebel writes that the IRS won't say how many "226-J" letters have gone out or who's getting them.

"But some practitioners expect Industries like trucking, restaurant, and staffing to see a high proportion of them," she explains. "That's because there is a high turnover rate inherent in those industries, which makes it challenging to keep track of workers, Alden J. Bianchi, a member at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo PC in Boston, told Bloomberg Law."

The Affordable Care Act in 2015 required employers with 100 or more full-time employees to offer minimum essential coverage to at least 70 percent of full-time workers. Failure to do so could result in a penalty of \$2,080 for every full-time employee, with penalties sometimes reaching \$10 million.

[Read the Bloomberg article.](#)

Health Care Lawyer Joins Foley in Los Angeles

[Foley & Lardner LLP](#) announced that Eric Cheung has joined the firm's Health Care practice as of counsel in the Los Angeles office.

The firm said Cheung is a health care transactional and litigation lawyer whose practice focuses on regulatory compliance, hospital operations, mergers and acquisitions and restructuring. He handles matters involving physician alignment models, medical staff and licensure issues, health plans, accountable care organizations and labor issues, including physician recruiting and hiring. Cheung represents clients across the health care industry, including hospitals, medical groups, physicians, diagnostic imaging centers and dialysis centers, the firm said.

"We're eager for Eric to join us," said Larry Vernaglia, chair of Foley's Health Care practice. "His vast litigation and transactional experience is a valuable asset to our growing practice. We welcome his perspective as we continue to navigate the health care industry's complex legal landscape on behalf of our clients."

The firm said Cheung is familiar with federal and state regulatory compliance issues concerning anti-kickback, self-referral and HIPAA laws, as well as risk management and litigation avoidance. He also has a background in biology which allows him to maintain an interest in the biotechnology issues that can potentially alter and transform health care and delivery and payment systems.

"Eric's unique insight on an array of health care issues and

his involvement with the California health care industry will be incredibly helpful to our clients in Los Angeles, across California and nationally,” said Jeff Atkin, managing partner of Foley’s Los Angeles office. “We’re happy to bring him on board.”

Cheung is a member of the California Society for Healthcare Attorneys, the Los Angeles Bar Association and the American Bar Association.

Prior to joining Foley, Cheung was a partner at Ervin Cohen & Jessup LLP.

Company Blames Gibson Dunn in Aetna HIV Settlement Notice Fiasco



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[Montgomery](#)
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A day after Aetna sued the claims administrator Kurtzman Carson Consultants for exposing confidential medical information about Aetna clients in a settlement notification, a KCC subsidiary brought a new suit blaming Aetna and its lawyers at Gibson Dunn & Crutcher for failing to protect the privacy of Aetna customers, [according to Reuters](#).

The underlying case is based on the mailing of prescription notices sent to Aetna insureds. Those mailings by KCC were in envelopes that included transparent windows that displayed text including the words “when filling prescriptions for HIV medications.”

KCC now claims that “Aetna and Gibson knew that windowed envelopes were being used in the mailings in question.” The law firm is not named as a defendant, but the firm’s actions on Aetna’s behalf are mentioned throughout the complaint, writes [Alison Frankel](#).

[Read the Reuters article.](#)

**Usual Suspects: MDL-
Experienced Lawyers Flock to
Opioid Litigation for**

Possible Big Payday



There will be a lot of familiar faces in U.S. District Judge Dan Polster's courtroom in Cleveland on Jan. 31, when lawyers gather for a hearing on multidistrict litigation against the nation's opioid manufacturers and distributors, writes Daniel Fisher, a contributor for [Forbes](#).

"The prospect of the biggest payday since the \$200 billion tobacco settlement in 1998 has drawn many of the same plaintiff lawyers who appear again and again in big tort cases over everything from VW diesels to Vioxx to the BP Deepwater Horizon disaster," according to Fisher.

Some of those firms include Simmons Hanly Conroy, the Lanier Firm, Seeger Weiss, Lief Cabraser, Motley Rice and Weitz & Luxenberg.

[Read the Forbes article.](#)

Whistleblowers' Lawsuit Leads to Massive Medical Fraud Settlement

What started seven years ago as a whistleblower lawsuit filed by two Charlotte-area doctors ended Tuesday with two emergency

room physicians groups paying federal and state governments more than \$33 million to avoid going to court, according to [a report](#) by *The Charlotte Observer*.

“The payments cap off longstanding allegations of a vast medical-fraud conspiracy between a major hospital chain and the physicians groups that bilked federal and state healthcare programs in North Carolina and five other states out of millions of dollars,” writes Michael Gordon.

He explains that prosecutors allege that EmCare physicians took kickbacks and other inducements from Health Management Associates, a now defunct chain of acute-care hospitals, to recommend that their patients be admitted to HMA hospitals rather than receive outpatient care. Then the doctors would order expensive and unnecessary tests, resulting in Medicare and Medicaid reimbursements to the hospitals.

[Read the Observer article.](#)

J&J, Bayer Ordered to Pay \$28 Million in First Xarelto Loss

Johnson & Johnson and Bayer AG are responsible for a woman's injuries tied to the blood-thinning drug Xarelto and must pay almost \$28 million in damages, jurors concluded in the companies' first loss at a trial over the medicine.

Bloomberg Technology [reports](#) that the plaintiff said she took Xarelto, sold by J&J's Janssen Pharmaceuticals unit, for more

than a year before being hospitalized in 2014 with gastrointestinal bleeding she blamed on the drug.

The jury in Philadelphia on Tuesday ordered J&J and Bayer, which jointly developed the product, to pay \$1.8 million in actual damages and \$26 million in punitive damages.

“The companies still face more than 21,000 patent suits over Xarelto, which has been linked to at least 370 deaths, according to U.S. Food and Drug Administration reports. Patients have said that Xarelto can cause uncontrollable bleeding and that Bayer and J&J failed to provide an antidote. Some also claim the companies failed to properly warn about the drug’s risks,” according to Bloomberg’s [Jef Feeley](#) and [Margaret Cronin Fisk](#).

[Read the Bloomberg article.](#)