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$156 Million AWARD

Jury's wrath softened by quick settlement

Malice found by jury; agreement struck before punitives considered.

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A unanimous Santa Monica, Calif., jury has smacked an insurance company with a $156 million compensatory damage award - - $100 million more than requested - - for fast-talking 700 doctors into buying malpractice policies.

The jury found malice in the promises made by Norcal Mutual Insurance Co. of San Francisco, but before adjourning to consider punitive damages, the parties settled the case for an amount both sides refused to disclose.

Jurors, "were outraged at the conduct of Norcal," asserted plaintiffs' counsel Jerry L. Ringler of Fogel, Feldman, Ostrov, Ringler & Klevens of Santa Monica. Jurors deliberated for two days after a month of testimony in ***Uzzi Reiss v. NORCAL Mutual Insurance Co.***, No. BC 190516 (Los Angeles Co., Calif., Super. Ct., Judge J. Stephen Czuleger). Fogel Feldman partner Larry R. Feldman also represented the plaintiffs in trial.

For its part, Norcal in a Dec. 18 prepared statement called "reports of a judgment incomplete and inaccurate" as the parties settled before the final verdict. Norcal called the dispute "a failed business transaction" and denied plaintiffs' claims that the insurer knowingly misrepresented contentions in order to induce the doctors to buy its medical malpractice policies. Robert G. Wilson of the Los Angeles' Cotkin, Collins & Ginsburg represented Norcal. He referred all queries to Norcal.

700 BAND TOGETHER

The plaintiffs were 700 physicians who in 1982 had formed Physicians Interindemnity Trust to handle their medical malpractice claims. Under this self-insurance trust, malpractice claims accumulated and the members were assessed a pro rata share to cover the amounts when they were paid.

In September 1995, the trust's members agreed to purchase its malpractice policies from Norcal, a deal worth about $140 million in premiums over a seven-year period, according to the plaintiffs. Norcal agreed to rebate part of the premiums from the new policies to pay off the outstanding claims in the trust.

The physicians asserted they could not have bought Norcal's policy without the insurer's assurances that the trust's debts would be paid. Otherwise, changing med-mal plans would have required the doctors to double-pay for coverage, which they were reluctant to do. Norcal's rebate plan was forwarded to overcome that situation and thereby tempt the 700 physicians to change plans.

Norcal countered that it had agreed to help with part of the debt but never intended to be held responsible for the entire amount. The language in its offering to the trust members specifically outlined the possibility of a shortfall that the doctors themselves would have to pay. The rebates were designed only to lessen the debt, not eliminate it.

The doctors alleged such distinctions were glossed over in the literature that accompanied the Norcal sales pitch, which led them to believe the rebates would cover the old claims. Yet Norcal knew all along that the rebates would not cover the debt, the plaintiffs asserted.

The plaintiffs presented an internal audit showing that Norcal predicted that up to $60 million, not $30 million as the trust estimated, would be needed to pay off the trust's pre-existing claims. Norcal's cloaking of the true cost of the pre-existing claims in order to peddle the insurance constituted fraud, the plaintiffs argued. When its members refused to pay, the trust went into receivership, which caused the debt to balloon from $30 million to $55 million, according to the plaintiffs.

"Every witness, every document added in a cumulative way to show that at all times the defendants knew their representations were false and misleading," alleged Ringler.