

CAUSE NO. 2017-77084

ACS PRIMARY CARE	§	IN THE DISTRICT COURT OF
PHYSICIANS SOUTHWEST,	§	
PA, and EMERGENCY	§	
SERVICES OF TEXAS, PA,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
MOLINA HEALTHCARE OF	§	
TEXAS, INC.,	§	
	§	
<i>Defendant.</i>	§	113TH JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your

decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. The answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND ADDITIONAL INSTRUCTIONS

“ACS” means ACS Primary Care Physicians Southwest, PA.

“EST” means Emergency Services of Texas, PA.

“Plaintiffs” means ACS and EST.

“Molina” means Molina Healthcare of Texas, Inc.

Corporations are liable for the acts of their officers. Corporations are also liable for the acts of their non-officer employees and agents when those acts are in the course and scope of that person’s employment or authority. Knowledge of a corporation’s officer is imputed to the corporation. Knowledge of a corporation’s agent acting in the course and scope of that person’s agency authority is also imputed to the corporation.

Do not consider assignments of benefits from Molina’s members for any question unless specifically instructed otherwise.

QUESTION NO. 1

Was the care provided by the Plaintiffs emergency care?

“Emergency care” means health care services provided in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could:

- (A) place the individual's health in serious jeopardy;
- (B) result in serious impairment to bodily functions;
- (C) result in serious dysfunction of a bodily organ or part;
- (D) result in serious disfigurement; or
- (E) for a pregnant woman, result in serious jeopardy to the health of the fetus.

Answer “Yes” or “No” for each.

ACS: Yes

EST: Yes

QUESTION NO. 2

Did Molina fail to pay for emergency care performed by ACS and EST for Molina's members at the usual and customary rate?

Answer "Yes" or "No" for each.

ACS: Yes

EST: Yes

If you answered "Yes" for any subpart(s) in Question No. 2, then answer with regards to the corresponding subpart(s) in Question No. 3. Otherwise, do not answer the following question.

QUESTION NO. 3

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ACS and EST for their damages, if any, that resulted from Molina's failure to pay for emergency care performed by ACS and EST for Molina's members at the usual and customary rate?

Consider the following element of damages, if any, and none other:

The difference, if any, between the usual and customary rate for the emergency care performed by ACS or EST for Molina's members and the actual amount Molina paid to ACS or EST.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

ACS: \$ 1,398,742.80

EST: \$ 188,206.40

QUESTION NO. 4

Did Molina engage in any unfair or deceptive act or practice that caused damages to ACS and EST?

An insurer engages in an unfair or deceptive act or practice if it refused to pay a claim at the usual and customary rate without conducting a reasonable investigation of the claim.

An insurer engages in an unfair or deceptive act or practice if it failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the insurer's liability had become reasonably clear.

Answer "YES" or "NO" for each of the following:

	ACS	EST
1. Refusing to pay the usual and customary rate for claims for emergency care without conducting a reasonable investigation with respect to the claims; or	<u>Yes</u>	<u>Yes</u>
2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of claims for emergency care when Molina's liability, if any, had become reasonably clear.	<u>Yes</u>	<u>Yes</u>

If you answered "YES" for any subpart(s) in Question No. 4, then answer with regards to the corresponding subpart(s) in Question No. 5. Otherwise, do not answer the following question.

QUESTION NO. 5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ACS and EST for their damages, if any, that were caused by the conduct you found to be unfair or deceptive?

Consider the following element of damages, if any, and none other:

The difference, if any, between a usual and customary rate for the emergency care performed by ACS or EST for Molina's members and the actual amount Molina paid to ACS or EST.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

	ACS	EST
1. Refusing to pay the usual and customary rate for claims for emergency care without conducting a reasonable investigation with respect to the claims; or	\$ <u>1,398,742.80</u>	\$ <u>188,206.40</u>
2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of claims for emergency care when Molina's liability, if any, had become reasonably clear.	\$ <u>1,398,742.80</u>	\$ <u>188,206.40</u>

If you answered "YES" for any subpart(s) in Question No. 4, then answer with regards to the corresponding subpart(s) in Question No. 6. Otherwise, do not answer the following question.

QUESTION NO. 6

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ACS and EST for their damages, if any, that were caused by the conduct you found to be unfair or deceptive?

For the purposes of this question, answer only as to the claims for which ACS or EST obtained any assignment of benefits from the patients.

Consider the following element of damages, if any, and none other:

The difference, if any, between a usual and customary rate for the emergency care performed by ACS or EST for Molina's members and the actual amount Molina paid to ACS or EST.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

	ACS	EST
1. Refusing to pay the usual and customary rate for claims for emergency care without conducting a reasonable investigation with respect to the claims; or	\$ <u>1,398,742.80</u>	\$ <u>188,206.40</u>

ACS

EST

2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of claims for emergency care when Molina's liability, if any, had become reasonably clear.

\$ _____ \$ _____

1,398,742.86

188,206.40

QUESTION NO. 7

Are the assignments of benefits identified in Plaintiffs' Exhibit 160b invalid?

Answer "Yes" or "No" for each.

ACS: No

EST: No

If you answered "YES" for any subpart(s) in Question No. 4, then answer with regards to the corresponding subpart(s) in Question No. 8. Otherwise, do not answer the following question.

QUESTION NO. 8

Did Molina knowingly engage in the conduct you found constitutes an unfair or deceptive act or practice?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, unfairness, or deceptiveness of the conduct in question. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only any conduct that you have found was a producing cause of damages to ACS and EST.

Answer "YES" or "NO" for each of the following:

	ACS	EST
1. Refusing to pay the usual and customary rate for claims for emergency care without conducting a reasonable investigation with respect to the claims; or	<u>Yes</u>	<u>Yes</u>
2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of claims for emergency care when Molina's liability, if any, had become reasonably clear.	<u>Yes</u>	<u>Yes</u>

If you answered "YES" for any subpart(s) in Question No. 8, then answer with regards to the corresponding subpart(s) in Question No. 9. Otherwise, do not answer the following question.

QUESTION NO. 9

What sum of money, if any, in addition to actual damages, should be awarded to ACS and EST against Molina because Molina's conduct was committed knowingly?

Answer separately in dollars and cents for damages, if any.

	ACS	EST
1. Refusing to pay the usual and customary rate for claims for emergency care without conducting a reasonable investigation with respect to the claims; or	\$ <u>12,500,000</u>	\$ <u>5,000,000</u>
2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of claims for emergency care when Molina's liability, if any, had become reasonably clear.	\$ <u>12,500,000</u>	\$ <u>5,000,000</u>

QUESTION NO. 10

Did each Plaintiff and Molina agree that Molina would pay the Plaintiffs for the medical services to Molina's members?

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

The parties may have reached an agreement even if they did not agree on the price Molina would pay the Plaintiffs. If you find that the parties otherwise agreed that Molina would pay the Plaintiffs but did not agree on the price, you may presume that the parties intended that Molina would pay Plaintiffs a reasonable price for the Plaintiffs' services.

Answer "Yes" or "No" for each.

ACS: Yes

EST: Yes

If you answered "Yes" for any subpart(s) in Question No. 10, then answer with regards to the corresponding subpart(s) in Question No. 11. Otherwise, do not answer the following question.

QUESTION NO. 11

Did Molina fail to comply with the agreements with ACS or EST that you found in Question No. 10?

Answer "Yes" or "No" for each.

ACS: Yes

EST: Yes

If you answered "Yes" for any subpart(s) in Question No. 11, then answer the corresponding subpart(s) in Question No. 12. Otherwise, do not answer the following question.

QUESTION NO. 12

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ACS and EST for their damages, if any, that resulted from such failure to comply?

Consider the following element of damages, if any, and none other:

The difference, if any, between a reasonable fee for the medical services provided by ACS and EST and the actual amount Molina paid to ACS and EST.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

ACS: \$ 1,398,742.86

EST: \$ ~~100~~ 188,206.40

QUESTION NO. 13

Did the Plaintiffs perform compensable work for Molina for which they were not fairly compensated?

The Plaintiffs performed compensable work if they rendered valuable services for Molina; Molina accepted, used, and benefited from the services; and, under the circumstances, Molina was reasonably notified that the Plaintiffs expected to be compensated for the services.

Answer "Yes" or "No" for each.

ACS: Yes

Yes

EST: _____

If you answered "Yes" to any subpart in Question No. 13, then answer the corresponding subpart(s) in Question No. 14. Otherwise, do not answer the following question.

QUESTION NO. 14

What is the difference between the reasonable value of such compensable work at the time and place it was performed, and the amount Molina actually paid the Plaintiffs?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

ACS: \$ \$ 1,398,742.86

EST: \$ 188,206.40

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. You may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

Presiding Judge

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer.

The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

_____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

- | | | | |
|-------|-------|-------|------|
| ✓ 1. | _____ | _____ | 20 ✓ |
| 2. | _____ | _____ | 23 ✓ |
| 3. | _____ | _____ | 25 ✓ |
| 4. | _____ | _____ | |
| X 5. | _____ | _____ | |
| ✓ 6. | _____ | _____ | 10 ✓ |
| ✓ 7. | _____ | _____ | 11 ✓ |
| ✓ 8. | _____ | _____ | 12 X |
| 9. | _____ | _____ | |
| ✓ 10. | _____ | _____ | |
| 11. | _____ | _____ | |