Nelson Hardiman Obtains Dismissal of False Claims Lawsuit Against Hospital



Nelson Hardiman attorneys Mark Hardiman, John A. Mills and Jonathan Radke obtained a complete dismissal with prejudice of a federal False Claim Act lawsuit that had been brought against a hospital. A former patient of the hospital who received numerous surgeries at the hospital's outpatient surgery center filed a False Claims action as a Relator on behalf of the United States alleging that the hospital intentionally defrauded the Medicare program by billing Medicare its facility charge when patients visited their surgeons for follow-up care following a major surgery. The Relator argued that the hospital's facility charge was for physician services rather than for hospital resources, and therefore was in violation of Medicare's 90-day global surgery rule.

Nelson Hardiman filed a motion for summary judgment to have the case dismissed. Nelson Hardiman argued that there was no merit to the Relator's theory of False Claims because the follow-up visits occurred in outpatient clinics that were owned and operated by the hospital as hospital outpatient departments, and therefore the hospital was entitled to bill Medicare for a facility charge. Nelson Hardiman painstakingly showed, as part of its motion, that the hospital's facility charge reflected the use of hospital resources rather than physician services, and therefore the 90-day global surgery rule was not implicated. Recognizing that there was no evidence to challenge the facts established by Nelson Hardiman's motion, the Relator instead attempted to contrive an entirely new theory to keep alive the False Claims allegation. The Relator's new theory was that the hospital was not allowed to bill a facility charge because the hospital did not satisfy certain Medicare regulations governing the "hospital-based" status of its outpatient departments. Nelson Hardiman responded aggressively, arguing that the Relator's attempt to pursue a new theory of False Claims liability at the summary judgment stage violated the rules of Federal Civil Procedure.

Following hundreds of pages of briefing and a hearing, District Judge Pregerson of the United States District Court for the Central District of California granted the motion filed by Nelson Hardiman (and concurrently denied a cross-motion filed by the Relator which sought an award of approximately $35,000,000 against the hospital). The Court agreed with Nelson Hardiman that the Relator had failed to provide evidence to support the False Claim allegation that the hospital's facility charge violated the 90-day global surgery rule. The Court also agreed that the Relator was precluded from attempting to assert new theories of False Claims liability against the hospital. As a result, the Court ordered the Relator's lawsuit dismissed with prejudice, and entered judgment in favor of the hospital, thus opening up the opportunity for Nelson Hardiman to recover its client's attorneys' fees from the Relator.