



## Healthcare, Pharmaceuticals, & Life Sciences

Susman Godfrey has represented all players in the healthcare arena—from industry titans to small medical care providers to individuals, winning cases on behalf of insureds, insurers, and government entities. In each case we take on, we help our clients navigate the continually evolving and unpredictable healthcare terrain.

We excel at helping our clients achieve a broad spectrum of goals—whether it’s defending a hospital, doctor, or other provider against an insurer; representing a class of insureds in a dispute over the provision of covered services by an insurance company; providing counsel to third-party payors in some of the largest cases in the country relating to overcharges for medical supplies and pharmaceuticals; or obtaining recoveries on behalf of government entities related to Medicare and Medicaid, including the largest False Claims Act recovery ever for a case involving kickback allegations.

### *Representative Experience*

#### **Government Recovery Litigation**

- ***Poehling v. United Healthcare.*** Representing relator, Benjamin Poehling, in a multi-billion-dollar false claims act case against UnitedHealth Group and several of its subsidiaries. Susman Godfrey is working closely with the government—which has fully intervened—to pursue a recovery from UnitedHealth for its failure to delete unsupported diagnosis codes that UnitedHealth submitted to the government as part of the government’s Medicare Part C and Part D programs.
- ***Strauser v. Stephen L. LaFrance Holdings (Walgreens Qui Tam Litigation).*** Representing a relator in a *qui tam* litigation seeking to recover from Walgreens and certain Walgreens-acquired entities reimbursement overpayments made by Medicare to those pharmacies as a result of a failure on their part to submit appropriate usual and customary charges to the government.
- ***US ex rel. Kester et al. v. Novartis Pharmaceuticals.*** Secured record-

setting \$390 million settlement in False Claims Act lawsuit against the Swiss drug manufacturer Novartis Pharmaceuticals Corporation. The whistleblower, David M. Kester, claimed that Novartis defrauded the Medicare and Medicaid programs by illegally paying kickbacks to pharmacies so they would recommend to doctors and patients six of Novartis' specialty medications. The settlement was the largest recovery to the Government ever in a False Claims Act lawsuit based solely on a kickback theory. [Read more.](#)

## Insureds Litigation

- ***In re Group Health Incorporated Insurance Litigation.*** Leading a putative class action brought by retired NYPD officer Steven Plavin on behalf of hundreds of thousands of New York City employees and retirees against the Group Health Incorporated (GHI) insurance company, alleging that GHI misled them about the scope of out-of-network coverage under the health insurance plan GHI offered. The case is currently on appeal to the Third Circuit from the district court's dismissal of the complaint. After briefing and oral argument, the Third Circuit agreed with our arguments that the complaint adequately alleged that GHI's statements and omissions were materially misleading and certified to the New York Court of Appeals the question of whether GHI's conduct was "consumer-oriented" under New York's consumer protection law.
- ***Liu v. Dignity Health.*** Susman Godfrey is representing Kana Liu and a putative class of plaintiffs who are bringing cutting-edge claims against Dignity Health, VEP Healthcare, Inc., and Ridgeline Emergency Physicians Medical Group, Inc. under California's unfair competition law and Consumer Legal Remedies Act, for breach of implied contract, and for declaratory relief. These claims are based on the emergency department's practice of "surprise billing," which occurs when patients visit an emergency department at a hospital that is "in-network" with their insurance carrier, but find out later that the emergency department physicians were out-of-network. Such incidents have proliferated within the last decade, with recent data indicating that between 20-22% of patients that visited an in-network emergency department hospital subsequently receive surprise medical bills.
- ***37 Besen Parkway v. John Hancock Life Insurance.*** Secured a \$91.25 million all-cash, non-reversionary settlement (before fees and expenses) for insurance policy owners against John Hancock Life Insurance Company. The plaintiff alleged that the life insurance company breached the class's contracts by failing to decrease rates on certain universal life insurance policies after having promised that rates would be "based on [John Hancock's] expectations of future mortality experience." The Honorable Paul Gardephe described the settlement as a "quite extraordinary . . . result achieved on behalf of the class."
- ***TVPX ARS v. Genworth Life and Annuity Insurance.*** Represented life settlement fund, TVPX, in its breach of contract action against Genworth

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Insurance Company. After Genworth secured an injunction based on a 2004 settlement of a prior case, Susman Godfrey took over the appellate argument before the Eleventh Circuit Court of Appeals and persuaded the Eleventh Circuit to vacate the district court's injunction. [Read more.](#)

## Life Sciences

- ***The Board of Regents of the University of Texas System v. IDEXX Laboratories.*** Obtained a \$51 million judgment for the Board of Regents of the University of Texas System (UT), in a breach of patent license lawsuit stemming from nearly 20 years of underpaid royalties by IDEXX Laboratories, Inc (IDEXX). UT's patents were drawn to Lyme Disease detection technology, and UT alleged that IDEXX underpaid for the life of the license. The 189th District Court in Harris County, Texas concluded that UT's interpretation of the unambiguous contractual language was correct and that IDEXX had underpaid UT royalties owed for sales of IDEXX's SNAP Products, tests used to detect Lyme disease, other tick-borne diseases, and heartworm in animals. The District Court awarded back royalties, contractual interest, and attorneys' fees, resulting in a judgment of over \$51 million.
- ***Flexuspine v. Globus Medical.*** Secured complete victory in Tyler, Texas, on behalf of client Globus Medical in spinal insert patent infringement litigation brought by Flexuspine, Inc., a local Tyler company. A jury in the US District Court for the Eastern District of Texas issued a defense verdict entirely in Globus Medical's favor.
- ***Barry v. Globus Medical.*** Secured confidential settlement for Globus Medical, Inc. in an indirect patent infringement case before the United States District Court for the Eastern District of Pennsylvania.
- ***Mobius Medical Systems v. Sun Nuclear.*** Won a permanent injunction and confidential settlement on behalf of Mobius Medical Systems, LP, a radiation oncology software company, against its exclusive distributor Sun Nuclear, for trade secret misappropriation.
- ***Sulzer Intermedics v. Medtronic.*** Hired to take over as lead trial counsel just six weeks before trial in federal court to defend Medtronic in a billion-dollar antitrust case. The plaintiff alleged that Medtronic conspired to monopolize the US pacemaker market and committed various torts along the way. Our team persuaded the court to grant summary judgment against all of the antitrust claims and some of the tort claims. The case later settled for pennies on the dollar. The amount of the settlement is confidential.

## Provider Representations

- ***CIGNA Health and Life Insurance v. Humble Surgical Hospital.*** Represented Humble Surgical Hospital in litigation brought by Cigna over Humble's business practices as an out-of-network provider of hospital services. Humble counter-sued for Cigna's failure to pay reasonable and

customary rates for the surgeries performed at Humble. Upon successfully trying the case, the Court required Cigna to pay 100% of the damages our client requested, imposed ERISA penalties of over \$2 million, and entered a final judgment of \$19 million, and dismissed all of Cigna's claims. The case settled after the 5<sup>th</sup> Circuit affirmed in part and reversed in part. [Read more.](#)

- ***Victory Healthcare v. Blue Cross/Blue Shield.*** Served as counsel to Victory Healthcare entities in litigation against the Blue Cross/Blue Shield divisions of Healthcare Services Corporation for failure to pay out-of-network claims according to the reimbursement terms of the plans governing the procedures. The case settled before trial.

### **Subrogation Litigation**

- ***AvMed v. US Bancorp.*** Represented a group of more than forty health plans (which combined, comprise more than 70% of the US private health insurance market) asserting healthcare reimbursement liens against claimants to the \$4.85 billion Vioxx compensation fund.
- ***Medical Mutual of Ohio v. GlaxoSmithKline;*** and ***PacifiCare v. Abbott Labs.*** Represented a group of third-party payors in litigation involving pharmaceutical overcharges. Susman Godfrey's clients asserted claims that the drug manufacturers artificially increased the price of their drugs in violation of the antitrust laws. Both cases settled for favorable amounts after Susman Godfrey beat back several rounds of dispositive motions.