

Litigators of the Week: AIG’s Trial Team at Quinn Emanuel and Mayer Brown Get a Defense Verdict in Delaware Insurance Coverage Trial

After just two hours of deliberations, jurors sided with Michael Carlinsky and Maaren Shah of Quinn Emanuel and Robert Harrell of Mayer Brown by denying the policyholder’s claim for \$27.5 million worth of coverage tied to a settlement with the state of Texas.

By Ross Todd
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Insurance coverage fights don’t always make for good litigation yarns.

But our Litigators of the Week — Michael Carlinsky and Maaren Shah of Quinn Emanuel Urquhart & Sullivan and Robert Harrell of Mayer Brown got to weave a fascinating tale in defending AIG in a case brought by policyholder Conduent.

“It’s about fraud,” is how Shah summed it up in [her opening](#) in the six-day trial in Delaware Superior Court.

According to their theory of the case, Conduent had structured a settlement with the state of Texas for Medicaid fraud in a way intentionally designed to make it look like a contract case. A contract settlement would trigger coverage. A fraud penalty would not.

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Litigation Daily: Who was your client and what was at stake?

Michael Carlinsky: Our clients were two subsidiaries of AIG: AIG Specialty Insurance and Lexington Insurance Company, who had issued primary and excess specialty professional liability policies to the plaintiff, Conduent Healthcare. Conduent had a



Courtesy photos

(L-R) Michael Carlinsky and Maaren Shah of Quinn Emanuel and Robert Harrell of Mayer Brown.

\$100 million tower of insurance under these policies, of which AIG Specialty and Lexington held a substantial portion. But it wasn’t only the money at stake. More importantly, it was the principle — that AIG believed Conduent and its counsel had given it misinformation and that Conduent committed insurance fraud by trying to manufacture insurance coverage that was not available under the policies. AIG was not willing to condone that kind of conduct. AIG believed it was important to stand up to this kind of behavior and to protect the integrity and

affordability of insurance from the negative effects of fraud. It was willing to stand up for its principles and take this case to trial.

Who all was on your team and how did you divide the work?

Maaren Shah: AIG brought Quinn Emanuel into the case in the months leading up to trial, and we were very fortunate to partner with the experienced team from Mayer Brown, who had been handling the case from the beginning. It was a true collaborative effort. Mike was lead trial counsel and he, Bob and I divided up responsibilities and witnesses among us. I handled the opening and key witnesses, while Mike did the closing and cross-examined a number of hostile witnesses. Bob crossed several witnesses too.

What was the courtroom setup like? I gather that the jurors were all masked, right?

Robert Harrell: The Delaware courts have mastered how to keep the wheels of justice moving during the COVID pandemic with thoughtful safety protocols in the courtroom. The jurors were protected with plexi-glass dividers between each other and dividers separating them from the rest of the courtroom. The judge and court staff had similar protection, and everyone wore a mask, except the judge and lawyers who were speaking.

Give me the thumbnail version of the underlying case that Texas brought against Conduent that led to this coverage dispute.

Harrell: In 2014, Texas sued Conduent under the Texas Medicaid Fraud Prevention Act for \$2 billion in civil penalties and treble damages for having actively misled the Texas government to believe Conduent was conducting a quality review of claims when it was deliberately cutting corners and doing no substantive review in order to cut costs. Texas accused Conduent of more than 200,000 unlawful acts in wrongfully approving Medicaid claims, and

for submitting false documents and information to the state concerning its review processes for at least eight years. Conduent finally settled that case for \$236 million in 2019, which was the biggest Medicaid fraud settlement ever obtained by the Texas Attorney General's Office.

This was a trial essentially about conduct in prior litigation. How did you make sure that the jury understood the intricacies of the prior proceedings that mattered without getting them lost in the weeds of procedure and the law?

Carlinsky: The key to winning a jury trial is keep it simple and interesting. Although the underlying case was complicated, we stuck to simple themes: We were not re-trying the underlying Medicaid fraud case, but it provided the explanation of why Conduent engaged in insurance fraud. We showed Conduent knew the prior Medicaid fraud case was not covered by insurance and thus tried to manufacture insurance coverage. Ultimately, the jury agreed and found by clear and convincing evidence that Conduent engaged in insurance fraud.

What were your main trial themes and how did you hammer them home with the jury?

Shah: It was a complicated backstory but a very simple case in the end: Conduent did not want to bear responsibility for the consequences of the Texas Medicaid fraud lawsuit, which it knew would likely not be covered by its insurance policies. So it concocted a scheme to pass the bill off to its insurers by manipulating the terms of its settlement agreement with Texas. They did that by insisting that Texas add what Conduent believed would be covered claims to the lawsuit, so that Conduent could pretend that it had paid all of the settlement money toward only those new claims and none to the non-covered Medicaid fraud claim that the lawsuit had always been about. That is how Conduent had hoped to

artificially manufacture insurance coverage for the Texas settlement.

Carlinsky: What drove this home to the jury was how Conduent's story changed over time and ultimately was not believable. We obtained written testimony from the Texas Attorney General's Office that revealed that the story that Conduent had told its insurers about how the settlement came about was entirely false and fraudulent, and mid-way through trial we uncovered even more documentary evidence that called into question the testimony Conduent's witnesses gave during trial. We also showed the jury how Conduent's public statements and securities disclosures from before and after the settlement did not match the story it was telling the insurers and the jury. Conduent's lack of credibility became impossible to ignore when we tied the evidence together for the jury in closing.

A key part of your evidence was written testimony from the Texas Attorney General's Office about how the settlement in the earlier case came about. Were you at all concerned that you were going to have to rely on a paper record instead of live testimony for that crucial element of your case?

Shah: That evidence turned out to be just as powerful in written form as if a witness had shown up to testify. Conduent repeatedly tried to impugn and undermine the credibility of that testimony, and suggested it was offered by a member of the attorney general's office who harbored a grudge. But ultimately, the jury fully credited the AG's testimony.

What's potentially important about this case for other insurance coverage defendants?

Carlinsky: No one should get away with manufacturing insurance when it doesn't exist. The insurers, led by AIG, believed Conduent and its counsel had

misled them and deliberately concealed material information from them. They decided to take a stand and fight back against a company that, through legal maneuvering, believed it could get away with it. The jury's verdict sent a powerful message to Conduent and others like it that the legal system will not tolerate manipulative and fraudulent behavior directed toward insurers.

Harrell: The jury confirmed that insurer/insured duties are a two-way street. The insured has to be honest and cooperate with the insurer when it settles a potentially insured lawsuit. It does not pay to try to game the system by trying to defraud the insurer.

What will you remember most about this matter?

Carlinsky: This was my first live trial since the pandemic. And we joined the case on the eve of trial. I will remember the hours and hours the team spent digging into the record, getting the case trial-ready, and spoon-feeding me the facts and documents. I will also fondly remember the jury, which seemed to rise up after my closing argument, and rendered a unanimous verdict in less than 2 hours.

Shah: I'll fondly remember how Mike and I came to be known as the "fire and ice" duo during trial. I'll leave it to those who know us to figure out who is which ...

Harrell: I will remember the hard work and persistence it took to uncover the hidden facts of how the underlying Medicaid fraud lawsuit got settled with the State of Texas. This included obtaining two highly-contested commissions from our Delaware Court to obtain documents and a deposition on written questions from the Texas Attorney General's Office. This evidence came together to make our case that Conduent tried to manufacture insurance coverage.