

Texas Court Says Insurer Waited Too Long To Collect \$6M

By [Todd Hutchinson](#)

Law360 (December 3, 2018, 8:36 PM EST) -- A Texas appellate court has ruled that United Healthcare is time-barred from pursuing more than \$6 million worth of emergency room facility fees it paid to a hospital and two affiliated urgent care centers that the insurer claimed weren't entitled to collect the fees.

The First Court of Appeals on Thursday upheld a state trial court's ruling that United Healthcare Services Inc. can't recoup facility fees from First Street Hospital LP and urgent care centers Emergency [Healthcare Partners LP](#) and St. Michael's Emergency Center LLC because its claims were filed too late.

United, the court ruled, was put on notice in 2011 that the practice of freestanding emergency rooms collecting facility fees could be improper because of an earlier lawsuit filed against the hospital by [Aetna Life Insurance Co.](#) alleging the hospital had used a "sham affiliation agreement" to charge facility fees it wasn't entitled to collect. The court said United had four years from that notice to file suit to try to collect those fees, but it didn't file suit to do so until 2015, after the statute of limitations had passed.

"Defendants established as a matter of law that notice of the Aetna suit on June 2, 2011, provided adequate information to United to put it on inquiry notice of its own claims and to require it to investigate and bring suit within four years," the panel wrote.

In its suit, United said it was defrauded into paying facility fees to medical facilities that were not entitled to receive them. First Street Hospital wrongly allowed freestanding emergency

centers to use its license to collect those fees for care that was provided at the off-site facilities.

In March 2011, United wrote to one of the facilities — St. Michael's Emergency Center — demanding reimbursement of \$1.8 million in facility fees overpayments.

In June 2011, United said it learned of a federal court suit filed by Aetna against First Street Hospital and St. Michael's, in which the insurer alleged St. Michael's was improperly charging facility fees through what amounted to a “sham affiliation agreement.”

United began investigating the Aetna suit, and kept writing letters demanding the refund of the facility fees, but didn't file suit until August 2015, more than four years after it learned of the Aetna suit.

The trial court agreed with arguments from the medical facilities that United's claims were time-barred.

Representatives for United and for the health care facilities did not respond Monday to requests for comment.

United Healthcare is represented by John B. Shely, Laura Trenaman, Cameron P. Pope, Brian Pidcock and Kelsey J. Hope of [Andrews Kurth Kenyon LLP](#).

First Street Surgical Hospital is represented by Andrew S. Hicks, Logan E. Johnson, Penelope E. Nicholson of [Schiffer Odom Hicks & Johnson PLLC](#).

Emergency Healthcare Partners LP is represented by Simon W. Hendershot III, Christy L. Martin and Katie T. Cowart of Cannon Martin & Hisey PC.

St. Michael's Emergency Center LLC, The Woodlands FEC LLC, Brian Orsak, and Shannon Orsak are represented by Brent Carpenter of Carpenter & Carpenter PC, Richard P. Hogan Jr., Jennifer Bruch Hogan and James C. Marrow of [Hogan & Hogan](#).

The case is United Healthcare Services Inc. et al., v. First Street Surgical Hospital LP et al., case number 01-17-00237-CV, in the Texas Court of Appeals for the First District.

--Editing by Connor Relyea.