

TEXAS LAWYER

\$4.7M in Attorney Fees: McKool Smith Notches Victory in Dallas Trial

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What You Need to Know

- A Dallas jury awarded McKool Smith attorneys \$4.7 million in attorney fees in a breach-of-contract case.
- The defendants stipulated to liability four days before trial.
- In the four-day trial on fees, McKool Smith had to justify their work for a trial on merits that did not occur.

A McKool Smith team of 14 lawyers who worked 13 months on a corporation's nondisparagement claim was awarded about \$4.7 million in an attorney fees trial in Dallas County.

The jury verdict in the 134th District Court came Thursday at the close of a four-day trial before Judge Dale Tillery.

The attorney fees trial was based on their work in the case of *BioTE Medical v. Donovitz*.

According to BioTE Medical's complaint, in May 2022, Dr. Gary S. Donovitz and his wife Lani Donovitz entered into a founder advisory agreement with BioTE Medical.

BioTE Medical is a hormone optimization and medical training company that partners



Courtesy photo

Alan Loewinsohn, a principal with McKool Smith.

with medical providers that treat aging through patient-specific bioidentical hormone replacement therapy and dietary supplements.

The agreement between the company and the Donovitzes included non-disparagement obligations. However, in June 2022, the Donovitzes sued the company's officers and directors, and alleged misconduct related to BioTE Medical becoming a publicly traded company.

Numerous false, disparaging and derogatory statements were made about employees, offi-

cers, directors and representatives, the complaint alleged.

Because of Donovan's prominent role as founder of the company, BioTE Medical sought relief in the form of a permanent injunction barring the Donovans from continuing to make statements that were harming the company, the suit claimed.

Defense counsel was William A. Brewer III of the Brewer, Attorneys & Counselors firm.

Brewer said, "Dr. Donovan respectfully disagrees with the jury's verdict, which was rendered on a starkly-incomplete evidentiary record. He will appeal. In addition, Dr. Donovan looks forward to fully litigating these matters – on the merits – in Delaware, where his fraud and conspiracy challenges to the underlying merger will be heard."

McKool Smith principal Alan Loewinsohn was lead counsel for BioTE Medical. Trial was set for Sept. 11, but on Sept. 8, after 13 months of denying liability or that the company was entitled to an injunction, defense counsel stipulated that their clients did breach the agreement and stipulated to entry of a permanent injunction, Loewinsohn said.

BioTE Medical then proceeded to trial on its claim for attorney fees as the prevailing party.

Loewinsohn both helped try the case and sat as a witness for the firm, he said.

"The number of attorneys who actually worked on the case was 14. The case also involved for a period of time counterclaims and third-party claims which were litigated for over a year," Loewinsohn said.

Those claims were also to have been considered at the September trial, but were dropped

by the defendants on Aug. 17, Loewinsohn said.

"What complicated the case for us is normally when you're asking for attorneys fees, the jury has seen the underlying case. The fruits of that work play out in the courtroom," Loewinsohn said.

Since there was no trial on the merits, Loewinsohn had to explain to the jury how the fees were justified, he said.

In addition, Gibson, Dunn & Crutcher partner Trey Cox testified as an independent expert witness.

"Cox reviewed all of our work and testified it was all reasonable and necessary," Loewinsohn said.

The jury was informed, for example, that BioTE Medical was billed for more than 6,000 hours because the case was on an incredibly accelerated pace, Loewinsohn said.

"Most cases of this complexity would have taken two or three years. This was put on an expedited track. It was that kind of effort that was required to get the defendants to reverse course and finally stipulate to liability," Loewinsohn said.

Another challenge was the absence of money damages, Loewinsohn said.

"Normally, the plaintiff is seeking money damages. So you can say we've been seeking X damages and had to spend Y to achieve X. In this case, we were only seeking an injunction. We had to explain why that volume of work and cost was justified for an injunction," Loewinsohn said.

In addition to the \$4.7 million, the jury verdict included up to \$255,000 depending on whether and to what extent the defendants pursue any appeals.