

Liberty Mut. Ins. Co. v Raia Med. Health, P.C.

2014 NY Slip Op 33757(U)

June 30, 2014

Supreme Court, Nassau County

Docket Number: 14240/13

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

LIBERTY MUTUAL INSURANCE COMPANY,
LIBERTY MUTUAL FIRE INSURANCE COMPANY,
LIBERTY INSURANCE CORPORATION, THE FIRST
LIBERTY INSURANCE CORPORATION, LM
INSURANCE CORPORATION, LIBERTY MUTUAL
MID-ATLANTIC INSURANCE COMPANY, LIBERTY
COUNTY MUTUAL INSURANCE COMPANY, LM
PROPERTY AND CASUALTY INSURANCE
COMPANY, AMERICAN STATES INSURANCE
COMPANY, GENERAL INSURANCE COMPANY OF
AMERICA, SAFECO INSURANCE COMPANY OF
ILLINOIS, SAFECO INSURANCE COMPANY OF
INDIANA, 21ST CENTURY INSURANCE COMPANY,
21ST CENTURY CASUALTY COMPANY, 21ST
CENTURY PACIFIC INSURANCE COMPANY, 21ST
CENTURY INSURANCE COMPANY OF THE
SOUTHWEST, 21ST CENTURY ADVANTAGE
INSURANCE COMPANY f/k/a/ AIG ADVANTAGE
INSURANCE COMPANY, 21ST CENTURY ASSURANCE
COMPANY f/k/a AMERICAN INTERNATIONAL
INSURANCE COMPANY OF DELAWARE, 21ST
CENTURY AUTO INSURANCE COMPANY OF NEW
JERSEY, f/k/a AIG AUTO INSURANCE COMPANY OF
NEW JERSEY, 21ST CENTURY CENTENNIAL
INSURANCE COMPANY f/k/a AIG CENTENNIAL
INSURANCE COMPANY, 21ST CENTURY INDEMNITY
INSURANCE COMPANY f/k/a AIG INDEMNITY
INSURANCE COMPANY, 21ST CENTURY NATIONAL
INSURANCE COMPANY f/k/a AIG NATIONAL
INSURANCE COMPANY, 21ST CENTURY NORTH
AMERICA INSURANCE COMPANY f/k/a AMERICAN
INTERNATIONAL INSURANCE COMPANY, 21ST
CENTURY PINNACLE INSURANCE COMPANY f/k/a
AIG INTERNATIONAL INSURANCE COMPANY OF
NEW JERSEY, 21ST CENTURY PREFERRED
INSURANCE COMPANY f/k/a AIG PREFERRED
INSURANCE COMPANY, 21ST CENTURY PREMIER
INSURANCE COMPANY f/k/a AIG PREMIER
INSURANCE COMPANY, 21ST CENTURY SECURITY
INSURANCE COMPANY, f/k/a NEW HAMPSHIRE
INDEMNITY COMPANY, INC, FARMERS
INSURANCE COMPANY OF ARIZONA, FARMERS
NEW CENTURY INSURANCE COMPANY, FARMERS
INSURANCES EXCHANGE, MID-CENTURY
INSURANCE COMPANY, , TRUCK INSURANCE
EXCHANGE, FOREMOST INSURANCE COMPANY,
GRAND RAPIDS, MICHIGAN, FOREMOST
PROPERTY & CASUALTY INSURANCE COMPANY,

TRIAL/IAS, PART 40
NASSAU COUNTY

Index No.: 14240/13

Motion Seq. No.: 001 & 002
Motion Submitted: 05/1/14

**FOREMOST SIGNATURE INSURANCE, BRISTOL
WEST CASUALTY INSURANCE COMPANY, BRISTOL
WEST INSURANCE COMPANY and any and all of their
subsidiaries, affiliates and/or parent companies,**

Plaintiff(s),

-against-

**RAIA MEDICAL HEALTH, P.C. and NEW IMAGING
AND DIAGNOSTIC SERVICES, P.C.**

PC Defendant(s),

**JOSEPH A RAIA, M.D. and HELEN T. MOREHOUSE,
M.D.,**

Nominal Owner Defendant(s),

**STANLEY SONN, AVRAM MAYER SHAPIRO,
MARCUS RUIZ, NEW IMAGING SERVICES, INC. and
NEW IMAGE MANAGEMENT CORP.,**

Management Defendant(s).

x

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X
Notice of Cross Motion/Opposition/Supporting Exhibits.....X
Opposition and Reply Affirmation.....X
Reply Affirmation.....X

Plaintiffs, Liberty Mutual Insurance Company et. al. (Liberty Mutual) moves this court, by Order to Show Cause, for an order (a) enjoining Defendants Raia Medical Health, P.C. and New Imaging & Diagnostic Services, P.C. (PC Defendants) from instituting any new actions, arbitrations or proceedings against Liberty Mutual for no-fault benefits pending determination of this action, (b) staying all current pending actions,

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arbitrations and proceedings brought by the PC Defendants against Plaintiffs for no-fault benefits, (c) enjoining PC Defendants from submitting any charges for no-fault benefits to Plaintiffs and (d) for such other and further relief the court deems just and proper. The PC Defendants oppose the motion and cross move for an order staying the within action pursuant to CPLR §7503 to allow PC Defendants to pursue their claims through arbitration as required by contract.

Plaintiffs brought an action against all defendants seeking Declaratory Judgments and alleging fraud and unjust enrichment. Plaintiffs' Complaint is dated November 12, 2013. There are no Answers. This court granted a temporary stay of all pending actions, arbitrations and other proceedings instituted by the PC Defendants against Plaintiffs for no-fault benefits pending a hearing and determination of the within motion. The stay is still in effect.

Plaintiffs allege the PC Defendants are improperly licensed health care professionals who collected no-fault benefits despite not being eligible to do so. They allege all defendants have set up a labyrinth of shell corporations to hide the fact that unlicensed individuals have been running health care facilities, and that licensed individuals are splitting fees with the unlicensed individuals. They further allege that licensed individuals have been set up as "nominal" owners of health care service businesses, even though those licensed individuals had little to nothing to do with the running of these companies. As an example, Plaintiffs allege that Defendant Dr. Raia has

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admitted to being "incompetent" to practice radiology but is listed as an owner of Defendant Raja Medical Health, P.C., a company that only provides radiology services. As a result of Plaintiffs' belief the PC Defendants are committing fraud against them, Plaintiffs have denied some claims, resulting in the PC Defendants bringing, at the time the motion was filed, 219 different lawsuits or arbitrations to receive no-fault reimbursements. Plaintiffs argue a preliminary injunction is necessary to prevent those 219 actions from going forward and to prevent the PC Defendants from continuing to seek reimbursement for no-fault benefits by submitting bills or commencing more actions. Without a preliminary injunction, Plaintiffs would have to assert their claims of fraud in at least 219 different actions.

The PC Defendants deny Plaintiffs allegations and assert Plaintiffs have not met the arduous standards for a preliminary injunction. Further, the PC Defendants assert the within action herein must be stayed as the insurance contracts underlying Plaintiffs' claims give the PC Defendants the option to mandate arbitration.

It is well established that to prevail on a motion for preliminary injunctive relief, the movant must clearly demonstrate a likelihood of success on the merits, the prospect of irreparable harm or injury if the relief is withheld and that a balance of the equities favors the movant's position (see *Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs.*, 65 AD3d 1051 [2d Dept. 2009]; *Pearlgreen Corp. v. Yau Chi Chu*, 8 AD3d 460 [2d Dept. 2004]). The decision to grant a preliminary injunction is committed to the

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sound discretion of the court (*see Tatum v. Newell Funding, LLC.*, 63 AD3d 911 [2d Dept. 2009]; *Bergen-Fine v. Oil Heat Inst., Inc.*, 280 AD2d 504 [2d Dept. 2001]), as the remedy is considered to be a drastic one (*see Doe v. Axelrod*, 73 NY2d 748 [1988]). Consequently, a clear legal right to relief which is plain from undisputed facts must be established (*see Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs* , 65 AD3d 1051, *supra*; *Gagnon Bus Co., Inc. v. Vallo Transp., Ltd.*, 13 AD3d 334 [2d Dept 2004]; *Blueberries Gourmet v. Aris Realty*, 255 AD2d 348 [2d Dept 1998]).

Article 63 of the CPLR governs the issuance of preliminary injunctions and temporary restraining orders. Pursuant to CPLR § 6301, a preliminary injunction may be granted in an action for permanent injunctive relief to restrain the defendant, during the pendency of said action, from doing that which the plaintiff seeks to enjoin permanently, by the final judgment. In addition, a preliminary injunction may be granted in any action where it appears that a defendant threatens, or is about to do, or is doing, or procuring to be done, an act in violation of the plaintiff's rights, respecting the subject of the action, which is likely to render the judgment ineffective. To constitute the "subject of the action" within the contemplation of CPLR § 6301, the property or assets for which restraint is sought must be unique or sufficiently specific and the very object of the claim giving rise to the demand for preliminary injunctive relief (*see Credit Agricole Indosuez v. Rossiyskiy Kredit Bank*, 94 NY2d 541 [2000]; *Coby Group, LLC v. Hasenfeld*, 46 AD3d 593 [2d Dept 2007]).

Plaintiffs have established a likelihood of success on the merits. They have spelled out a case for fraud, nominal ownership and potential fee splitting by Dr. Raia. While Dr. Raia vociferously denies such an arrangement in his affidavit submitted in the opposition papers, that affidavit directly contradicts statements he has made in another affidavit and under oath while giving oral testimony. Dr. Raia is not a radiologist, has previously testified to being "incompetent" to read films, yet is the owner of a concern that provides solely radiological services.

The court further finds subjecting Plaintiffs to litigating 219 separate claims, plus any that have been filed since and will be filed, in different forums will result in irreparable harm to Plaintiffs. It will further be a significant and unnecessary drain on judicial resources and likely result in multiple inconsistent rulings. *Liberty Mut. Ins. Co. v. Excel Imaging, P.C.*, 879 F.Supp.2d 243 (E.D.N.Y. 2012), *St. Paul Travelers Ins. Co. v. Dipak Nandi*, 15 Misc.3d 1145(A) (NY Sup. 2007).

A balancing of the equities also favors Plaintiffs. If the ultimate decision in the underlying action favors the PC Defendants, they will still have the ability to pursue their reimbursements, with interest. However, should the Plaintiffs be forced to litigate the original 219 cases plus the others that have been or will be filed, but then ultimately prevail in the underlying matter herein, they will be forced to engage in even more litigation to recoup payments made, or potentially appeal decisions rendered in light of this case. Accordingly, Plaintiffs' have met their burden to be entitled to a preliminary

injunction.

Pursuant to CPLR §6312(b), Plaintiffs must post an undertaking that will pay damages to the PC Defendants caused as a result of the preliminary injunction should the Plaintiffs not be successful in the underlying action. This is a mandatory condition. *Carter v. Konstantos*, 156 A.D.2d 632 (2nd Dept. 1989), *Ying Fung Moy v. Hoho Umeki*, 10 A.D.3d 604 (2nd Dept. 2004), *Winchester Global Trust Co. Ltd v. Donovan*, 58 A.D.3d 833 (2nd Dept, 2009). Neither party addressed the issue of an undertaking in their papers. There is a plethora of pending litigation, but the court has been given no indication of their value. Should the PC Defendants ultimately prevail herein, they will still have the ability to pursue the claims being stayed, but there it is acknowledged there is a significant cost to the payments being delayed. In light of the uncertainties, the court directs the parties to submit, within ten days of date of this order, support in affidavit or affirmation form indicating a reasonable undertaking amount and a concise explanation supporting that amount. The affidavits or affirmations shall be submitted on notice to the other side without the ability to respond. If the court is unable to determine an appropriate amount based upon the papers submitted, a hearing will be ordered. The parties are also free to stipulate to an amount.

The PC Defendants cross move for an order staying these proceedings and compelling Plaintiffs to submit to arbitration for outstanding claims. While the ruling on this cross motion can be seen as moot in light of the preliminary injunction, as the

preliminary injunction is, theoretically, subject to vacatur under certain circumstances including an appeal, it makes sense for the court to address this issue.

It is undisputed that the underlying contract between the PC Defendants and Plaintiffs allow the PC Defendants the option of arbitrating claims. It is also undisputed that the PC Defendants have chosen to pursue some of these claims in state court. The PC Defendants argue they should be allowed to arbitrate all of these claims, in particular the unpaid claims. The parties cite to seemingly conflicting precedent to support their positions.

This court finds the most consistent argument is made by Plaintiffs, who argue the PC Defendants have waived their right to arbitrate any claim for which they have sought the intervention of state courts. *See Liberty Mut. Ins. Co v. Excel Imaging, P.C., supra, Government Employees Ins. Co. v. Five Boro Psychological Services, P.C.*, 939 F.Supp2d, 208 (E.D.N.Y. 2013). “[T]he decision to litigate disputes over unpaid claims in state court precludes Defendants from now seeking to compel arbitration with respect to those same claims.” *Id.* at 218.

The PC Defendants point to cases out of this court to support their position. Had the cases not been distinguishable or inapposite, it would have been a compelling argument not to have inconsistent decisions on similar facts being issued out of the same courthouse. However, those cases were either decided without opposition (*American Transit v. Elzanaty et. al.*, Index No 601543/13, Nassau County, Hon. Thomas Feinman,

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2013) or involved facts different from the matter herein. *See Utica Mutual Insurance Company v. Cullom* (2012 NY Slip Op 31332 (u), Docket No 16426/11, Hon. Jeffrey Brown (court did not find irreparable injury) and *Govt Employees Ins Co. v. Avanguard Med Group PLLC*, 2012 NY Slip OP 3133 (v), Docket No. 16313, Hon. Denise Scher (the facility in question was allowed to perform surgical and non-surgical procedures, and defendants had met all state-required accrediting requirements). Accordingly, the PC Defendants' cross motion is denied.

It is therefore,

ORDERED, that Plaintiffs motion for a preliminary injunction is **GRANTED**, pending submissions on the issue of the amount of an undertaking. Pending a determination of this action, the preliminary injunction (a) enjoins the PC Defendants, their agents, servants, employees and all persons acting on their behalf, from filing, commencing and/or instituting against plaintiffs any new actions, arbitrations or other proceedings seeking reimbursement for no-fault benefits, (b) stays all current pending actions, arbitrations or other proceedings instituted by and/or on behalf of the PC Defendants against plaintiffs involving reimbursement for no-fault benefits and (c) enjoins the PC Defendants, their agents, servants, employees and all persons acting on their behalf from submitting to plaintiffs any bills, claims and/or other charges for no-fault benefits; and it is further

ORDERED, that each party shall submit, by affirmation or affidavit its argument

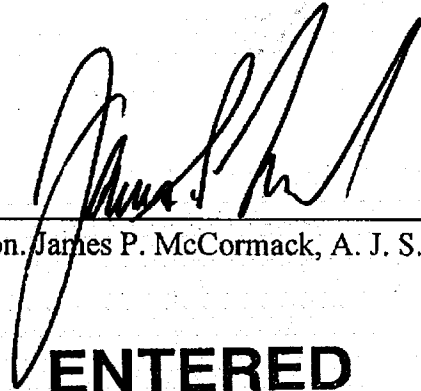
and support for an amount of the undertaking within ten days of the date of this order; and it is further

ORDERED, that pending the posting of the undertaking, the temporary stay remains in full force and effect, with the PC Defendants granted leave to move for relief from the temporary stay and preliminary injunction should Plaintiffs not post the undertaking after the amount is determined; and it is further

ORDERED, that the PC Defendants' cross motion to compel arbitration is **DENIED**.

The foregoing constitutes the Decision and Order of the Court.

Dated: June 30, 2014
Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED

JUL 03 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE