SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: CCP

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AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff, Decision and order

- against - Index No. 520851/2021

LONG ISLAND JEWISH MEDICAL CENTER
(NSUH) A/A/O CARLOS MACHARE,
Defendants, May 7, 2024

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #12

According to the complaint on January 12, 2018 Carlos Machare was involved in an automobile accident. Machare was insured by the plaintiff, American Transit Insurance Company [hereinafter 'American Transit'] and notified American Transit of the accident. Machare sought medical treatment in connection with injuries sustained and was treated by multiple providers including the defendant Long Island Jewish Medical Center pursuant to the no-fault provisions of the insurance policy. American Transit refused to pay any of the no-fault bills submitted by Long Island Jewish Medical Center on the grounds such medical treatment was not necessary and not causally related to the accident. The parties appeared for arbitration and the arbitrator awarded Long Island Jewish Medical Center $5,750.84.

That award was sustained by a master arbitrator. The plaintiff has commenced this action pursuant to Insurance Law §5016(c) seeking de novo review of the no-fault claims sought in this case.

The plaintiff filed a motion seeking to vacate the note of

issue filed and to compel certain discovery. Thus, significant discovery issues remain outstanding and the court will address them substantively.

Conclusions of Law

First, the plaintiff has served a HIPAA authorization upon the defendant to subpoena all medical records from all physicians that treated Machare. Machare is an assignor who assigned all his rights to the defendant. "By virtue of their assignment of no-fault benefits to their providers, eligible injured persons have divested themselves of their interest in those benefits, and they are not parties to actions commenced by their assignees" (see, MIA Acupuncture P.C., v. Mercury Insurance Company, 26 MIsc3d 39, 894 NYS2d 321 [Supreme Court Appellate Term 2009]). The above rule is no different in this case where the action has been commenced by an insurance provider pursuant to Insurance Law §5016(c) seeking de novo review of an arbitration award regarding no-fault benefits. Thus, Mchare is a non-party witness over whom the defendant does not have control. In Westchester Medical Center v. State Farm Mutual Automobile Insurance Company, 2009 WL 730506 [Supreme Court Nassau County 2009] a hospital sued seeking recovery of no-fault benefits on behalf of an individual where such benefits were denied by State Farm on the grounds of intoxication. The court explained that the hospital could not be

required to produce the assignor for a deposition because the patient/assignor "is not a party to this action" (id). The court explained that "the principle that the "assignee 'stands in the shoes' of an assignor" should not be construed to mean that it is the burden of the plaintiff hospital to produce at its deposition the nonparty who might possess information concerning STATE FARM's defense of intoxication, nor to produce records and reports of other persons and companies" (id). The court did note that "while it is the Court's view that a deposition and demand for documents from him appears to be necessary, the proper course is by subpoena and notice demonstrating special circumstances of a non-party witness, pursuant to CPLR §3101(a)(4)" (id). provides that where an arbitrator's award exceeds $5,000 the insurer or the claimant may institute a action seeking de novo review to "adjudicate the dispute" (id). Therefore, the defendant cannot be required to provide HIPAA authorizations and the motion seeking to compel such authorizations is denied.

Likewise, any correspondences with any other facilities, in any manner, need not be disclosed. Those correspondences, if they exist, cannot be disclosed without proper authorizations, which as noted, the defendant has no authority to provide.

However, the defendant must provide all information regarding the medical treatment of the claimant Machare.

Concerning interrogatories the plaintiff may re-serve

interrogatories with a maximum of twenty five questions pursuant to 22 NYCRR §202.20. Such interrogatories shall be served within fifteen days of receipt of this order.

Next, the plaintiff seeks "all papers and correspondence regarding the formation of Defendant, including ownership agreements, purchase agreements, transfer agreements, certificates of incorporation, annual reports, and filing receipts. Contracts and agreements reflecting or affecting the ownership of Defendant" (see, Affirmation in Support, page 6 [NYSCEF Doc. No. 144]). In State Farm Mutual Automobile Insurance Company v. Mallela, 4 NY3d 313, 794 NYS2d 700 [2005] the court held that an insurance provider need not submit no-fault payments to a medical facility that has fraudulently incorporated. However, the court explained that payments could not be withheld unless the insurance provider maintained good cause to believe such fraud exists. Thus, to seek discovery in this regard there must be some basis to believe the facility has engaged in some wrongdoing (Lexington Acupuncture PC v. General assurance Company, 35 Misc3d 42, 944 NYS2d 686 [Supreme Court Appellate Term 2012]). As the court noted where "an insurer requests discovery concerning a Mallela defense, the request should be granted as long as there are sufficient allegations supporting such a defense" (id). In this case there are no allegations of any impropriety which would necessitate the

production of any Mallela information. The plaintiff argues that in an unrelated case United States v. Pierre et al., 22-cr-19 [S.D.N.Y. 2023] evidence of such improper maintenance of medical facilities has been alleged. While that may be true, that unrelated case does not involve any of the same individuals at all and thus there is no basis to seek any of this information. To be sure, if the plaintiff had any credible information in this regard then such discovery would be proper (BS Kings County Medical P.C., A/A/O Igor Sarkisov, v. State Farm Mutual Automonile Insurance Company, 68 Misc3d 879, 129 NYS3d 313 [Civil Court of the City of New York 2020]).

Therefore, without any specific evidence of any improper corporate formation or improper procedures conducted at the facility the motion seeking such information is denied.

Lastly, the motion seeking to vacate the Note of Issue is denied.

So ordered.

ENTER:

DATED: May 7, 2024
Brooklyn, N.Y.

Hon. Leon Ruchelsman
JSC