

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 32

---

AUTOONE INSURANCE COMPANY, et al.,

x

- against -

MANHATTAN HEIGHTS MEDICAL, P.C.,  
et al.

INDEX NO. 25257/08

MOTION SEQ. NO. 1

BY: Hon. Charles J. MARKEY, J.

DATED: July 31, 2009

---

x

CHARLES J. MARKEY, J.:

The plaintiffs have moved for a preliminary injunction, inter alia, prohibiting defendant Pueblo Medical Treatment, PC, defendant Nagle Medical Plaza, PC, defendant Kingsbridge Community Medical, PC, defendant Inwood Hill Medical, PC, defendant Bronx Park Medical, PC, and defendant Healthbay Medical, PC from the further prosecution of pending lawsuits and arbitration proceedings brought by them against the plaintiffs to recover No Fault first-party medical benefits.

The complaint alleges that the plaintiffs are domestic and foreign insurance companies that issue automobile policies in New York State providing benefits payable pursuant to the Comprehensive Automobile Insurance Reparations Act (the No-Fault Law) presently codified in article 51 of the Insurance Law. The plaintiffs are required by law to pay an insured's No-Fault benefits directly to a health care provider who has been assigned his right to benefits covering medically necessary treatments and tests. Some of the defendants, termed "the Management Defendants," are the true owners of certain medical facilities also

named in the complaint and termed “the provider defendants.” Some of the defendants, termed “the licensed defendants,” hold or did hold medical licenses and fronted as the owners of the provider defendants. The licensed defendants “essentially sold the use of their names and licenses to “the Management Defendants.”

There are three groups of defendants each comprised of some of the licensed defendants, provider defendants, and management defendants:

(1) The Pevzner management group allegedly using the licenses of Dr. Miller, Dr. Mukendi, and Dr. Kadianakis (Group 1),

(2) the Kargman management group allegedly using the licenses of Dr. Garcia, Dr. Iroku, Dr. Richie, and Dr. Chiarmonte (Group 2), and

(3) the Drabkin/Freed management group allegedly using the licenses of Dr. Howell and Dr. Iroku (Group 3).

The following chart sets forth the three groups of defendants:

Group 1

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Manhattan Heights Medical, PC West River Medical, PC Acadian Medical, PC Jean Miller, D.O. Lane Medical, PC	Melchias Mukendi, MD Jean Deborah Miller, DO Jean Deborah Miller, DO Kiki Kadianakis, DO	Simon Pevzner/Seymon Pevner/Seymon Pezner/Simon Pevznea, Stanislav Sorkin/Stanley Sorkin, Strob Inc., SVG MGMT, INC., Josh Vainer, ASPG MGMT Inc., Veritas Management Inc., Almas Management, Inc., Lokh Corp., Group Square, Kritek, Oleg Rubin, Bazmana Rubin & Sazha Management Corp.

Group 2

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Dykman Med. Diag. & Tmt PC Pueblo Medical Treatment PC Nagle Medical Plaza, PC Kingsbridge Community Med PC  Total Health Care Medical PC	Rafael Garcia, MD  Rafael Garcia, MD  Humphrey Iroku, MD Carl Richie, MD & Lawrence Chiarmonete, MD  Carl Richie, MD	Dmitry Kargman, SRK Management Group Inc. & Care Plus of NY Inc., Claire Slobodsky aka Claire Slobodski, CNL Management Corp., Icon Management Inc., Espy Management Inc. & Zev Corporation

Group 3

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Inwood Hill Medical PC Bronx Park Medical PC Healthbay Medical PC	Neal Worrell Howell MD Neal Worrell Howell MD Humphrey Iroku MD	Inessa Drabkin/Inessa Freed/Inna Freed/Inna Drabkin/Iness Drabkin, Silver Pines Management Corp., Integra CBA Co. Inc., Alexander Freed, PKH Corp., Michael Mazur Yevgeniy Ryvkin, & Lucy Rodriguez

The defendants have allegedly defrauded the plaintiff insurers by submitting bills pursuant to New York State's No-Fault Law for medical services rendered by corporations not truly owned by holders of medical licenses. On or about October 15, 2008, the plaintiffs (over 20 insurance companies) began this lawsuit asserting six causes of action, the first for common-law fraud, the second for unjust enrichment, the third for a declaratory judgment concerning fraudulent incorporation, the fourth for declaratory judgment concerning illegal fee splitting, the fifth for reimbursement based on Public Health Law § 238-a, and the sixth for a declaratory judgment concerning medical services allegedly rendered by independent contractors.

In order to obtain a preliminary injunction, the plaintiffs had to show (1) a likelihood of ultimate success on the merits, (2) irreparable injury if provisional relief is withheld, and (3) a weight of the equities in their favor (*see, Aetna Insurance Co. v. Capasso*, 75 NY2d 860 [1990]; *McNeil v. Mohammed*, 32 AD3d 829 [2<sup>nd</sup> Dept. 2006]). The plaintiffs

successfully carried this burden (*see, St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, [2007 NY Slip Op 51154](#)[U] [Sup Ct Queens County, Dollard, J.] [in action involving alleged fraudulently incorporated medical providers, preliminary injunction granted prohibiting defendants from prosecuting pending lawsuits and commencing future lawsuits against No Fault insurer]).

In regard to the first requirement, the plaintiffs established a likelihood of ultimate success on the merits by making a prima facie showing that they can prove their causes of action based on fraudulent incorporation (*see, McNeil v Mohammed*, 32 AD3d 829, *supra*; [Trimboli v Irwin](#), 18 AD3d 866 [2<sup>nd</sup> Dept. 2005]; [Four Times Square Associates, L.L.C. v Cigna Investments, Inc.](#), 306 AD2d 4 [1<sup>st</sup> Dept. 2003]). The verified complaint, the affidavit of James Beadle (an investigator for plaintiff Autoone Insurance Company), and the deposition and examination transcripts from other cases show prima facie that certain of the licensed defendants did not truly own and operate the provider defendants against whom injunctive relief is sought. “State law mandates that professional service corporations be owned and controlled only by licensed professionals (*see, Business Corporation Law* §§ 1503[a]; 1507, 1508), and that licensed professionals render the services provided by such corporations (*see, Business Corporation Law* § 1504[a])” ([One Beacon Ins. Group, LLC v Midland Medical Care, P.C.](#), 54 AD3d 738, 740 [2<sup>nd</sup> Dept. 2008]).

In *State Farm Mut. Auto. Ins. Co. v Mallela*, (4 NY3d 313 [2005]), an action for, inter alia, a declaratory judgment brought by an insurer against defendants allegedly

operating the same type of scheme allegedly involved in the case at bar, the Court of Appeals held that, on the basis of 11 NYCRR 65-3.16(a)(12), insurers may deny no-fault payments to fraudulently incorporated health care providers to which patients have assigned their claims. In regard to the requirement of irreparable injury, the plaintiffs adequately demonstrated that equitable relief is a more efficient remedy than monetary damages (*see, People by Abrams v Anderson*, 137 AD2d 259 [4<sup>th</sup> Dept. 1988]; [\*Poling Transp. Corp. v A & P Tanker Corp.\*, 84 AD2d 796 \[2<sup>nd</sup> Dept. 1981\]](#)).

The plaintiffs have shown that the issuance of a preliminary injunction is necessary to prevent the repetitive litigation and arbitration of numerous No Fault claims for reimbursement by medical providers where the insurers raise the same defense of fraudulent incorporation. In regard to the weight of the equities (*see, Reuschenberg v Town of Huntington*, 16 AD3d 568 [2<sup>nd</sup> Dept. 2005]; [\*Credit Index, L.L.C. v Riskwise Intern. L.L.C.\*, 282 AD2d 246 \[1<sup>st</sup> Dept. 2001\]](#); [\*McLaughlin, Piven, Vogel, Inc. v W.J. Nolan & Co., Inc.\*, 114 AD2d 165 \[2<sup>nd</sup> Dept.\]](#), *appeal denied*, 67 NY2d 606 [1986]; [\*Metropolitan Package Store Ass'n, Inc. v Koch\*, 80 AD2d 940 \[3<sup>rd</sup> Dept. 1981\]](#); [\*Nassau Roofing & Sheet Metal Co., Inc. v Facilities Development Corp.\*, 70 AD2d 1021 \[3<sup>rd</sup> Dept\]](#), *appeal dismissed*, 48 NY2d 654 [1979]; 67A NY Jur2d, “Injunctions,” § 31), the issuance of a preliminary injunction will not unduly cause hardship to any of the defendants, but, to the contrary, all parties will benefit from having the issue of fraudulent incorporation determined in one action.

Accordingly, the plaintiffs' motion for a preliminary injunction is granted. The parties may submit affidavits concerning the proper amount of the undertaking at the time of the settlement of the order to be entered hereon (*see, NSA, Inc. V. L.I.C. Food Court, Inc.*, 2009 WL 1904683, 2009 NY Slip Op 51411 [U] [Sup Ct Queens County 2009] [decision by the undersigned]; *Chiu Cheuk Chan v. 28-42, LLC*, 2009 WL 129893, 2009 NY Slip Op 50080 [U] [Sup Ct Queens County 2009] [decision by the undersigned]; [\*Nand Land LAL v. Shiri Guru Ravidas Sabha of New York Inc.\*, 2008 NY Slip Op 51720](#)[U] [Sup Ct Queens County 2008]; [\*Daily Bread Café Inc. v. City Lights at Queens Landing Inc.\*, 2007 WL 3375899, 2007 NY Slip Op 52158](#) [Sup Ct Queens County 2007]; [\*Molyneux-Petraglia v. Northbridge Capital Mgmt. Inc.\*, 2007 WL 1203597, 2007 NY Slip Op 50845](#)[U] [Sup Ct N.Y. County 2007]; [\*Citadel Mgt. Inc. v. Hertzog\*, 182 Misc 2d 902, 906](#) [Sup Ct Queens County 1999]; [\*Connor v. Cuomo\*, 161 Misc 2d 889, 897](#) [Sup Ct Kings County 1994]; *Jewelry Realty Corp. v. 55 West 47 Co.*, 90 Misc 2d 407, 408 [Sup Ct N.Y. County 1977].)

Settle order.

---

Hon. Charles J. Markey  
Justice, Supreme Court, Queens County

**Appearances:**

**For the Plaintiffs:** John E. McCormack, P.C., 41 Hilton Ave., Hempstead, NY 11550

**For Defendants Bronx Park Medical, P.C., Inwood Hill Medical P.C., Dr. Noel Worrell Howell, Alexander Freed, Innessa Drabkin, Silver Pines Management Corp., Integra CBA Co., Inc., PKH Corp., and Michael Mazur:** Lifshutz & Lifshutz, P.C., by Gary Burgoon, 501 Fifth Ave., suite 506, NY, NY 10017

**For Defendant Healthbay Medical, P.C.:** George T. Lewis, Jr., P.C., 485 Underhill Blvd., suite 101, Syosset, NY 11791

**For Defendants Jean D. Miller, D.O., Jean Miller, D.O., P.C., and Acadian Medical P.C.:** Kern Augustine Conroy & Schoppman, P.C., by Douglas M. Nadjari, Esq., 1325 Franklin Ave., Garden City, NY 11530

**For Defendants Josh Vainer and SVG MGMT., Inc.:** Matthew J. Conroy & Associates, P.C., by Matthew J. Conroy and Maria Campese Diglio, Esqs., 350 Old Country Road, suite 106, Garden City, NY 11530

**For Defendants Simon Pevzner, ASPG MGNT., Inc., Veritas Management Corp., Group Square I.S. Ltd., Kritek, Inc., Strob, Inc., and Lokh Corp.:** Schlam Stone Dolan, LLP, by Thomas A. Kissane and Samuel L. Butt, Esqs., 26 Broadway, NY, NY 10004

**Other Defendants are either Pro Se and/or have not appeared.**