

High Definition MRI, P.C. v The Travelers Cos., Inc.

2020 NY Slip Op 30080(U)

January 3, 2020

Supreme Court, New York County

Docket Number: 650882/2013

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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INDEX NO. 650882/2013

HIGH DEFINITION MRI, P.C.,

08/10/2018,

Plaintiff,

MOTION DATE 08/10/2018

- v -

MOTION SEQ. NO. 004 005

THE TRAVELERS COMPANIES, INC., FARMINGTON
CASUALTY COMPANY, UNITED STATES FIDELITY AND
GUARANTY COMPANY, PREMIER INSURANCE
COMPANY OF MASSACHUSETTS, JOHN DOES 1-10,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 124, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 153, 154, 155, 156, 157, 158, 160, 162

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 005) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 128, 145, 146, 147, 148, 149, 150, 151, 152, 159, 161

were read on this motion to/for DISMISSAL

The plaintiff, High Definition MRI, P.C. (High Definition), seeks payment for a series of MRIs performed, payment of which was denied by the defendants (Travelers) as Travelers claims that the purported owner of High Definition, Dr. Jeffrey Chess (Dr. Chess) failed to report for mandatory examinations under oath (EUO) and provide necessary documentation regarding corporate structure (*Mallela* information) that was requested in belief that High Definition was a fraudulently formed corporation. High Definition moves for partial summary judgment on liability, arguing that Travelers improperly requested *Mallela* information and requests the appointment of a referee to determining which claims were improperly denied and the amount of such claims. Travelers cross-moves for summary judgment seeking to dismiss the plaintiff's action, arguing that all claim denials for failure to report for an EUO were proper, and there is no issue of triable fact. High Definition's motion is denied. Travelers' motion is granted.

High Definition submitted approximately 390 MRI scans to Travelers as an assignee under New York No-Fault Insurance Law § 5101. Travelers, upon the receipt of the claims, requested additional information from High Definition and conducted an independent investigation. The investigation revealed that High Definition was potentially a continuation of a previous fraudulently incorporated MRI practice, Andrew Carothers, P.C. (Carothers), as Dr. Chess used the same three buildings, MRI machines, and employees that Carothers used, including at least one employee, Irina Vayman, who was found to be a non-physician owner of Carothers. See Andrew Carothers, M.D., P.C. v. Progressive Ins. Co., 33 NY3d 389 (2019). Subsequently, Travelers requested that Dr. Chess submit evidence showing that High Definition was properly incorporated and that he submit to an EUO on the subject. Dr. Chess failed to provide the requested information and report for any EUO, and Travelers subsequently denied the MRI claims.

Upon an insurance company's request, a medical provider seeking reimbursement must "submit to examinations under oath" and "provide any other pertinent information that may assist the [insurance] Company in determining the amount due and payable." 11 NYCRR 65-1.1. Failure to comply with such requests allows for an insurance company to properly deny a provider's no-fault claims. See Allstate Insurance Co. v Pierre, 123 AD3d 618 (1st Dept. 2014). The plaintiff erroneously contends that *Mallela* information cannot be requested through EUOs, and failure to provide *Mallela* information when requested does not constitute a proper reason to deny no-fault benefits. This issue was recently decided by the Court of Appeals in Andrew Carothers, M.D., P.C. v. Progressive Ins. Co., where the court held that insurance companies may seek "Mallela discovery as part of claim verification" so long as it has a "specific objective justification" for doing so.

Travelers submits the deposition transcript of Kathleen Alpin, a memo written by Travelers investigator Ann Slattery, the deposition of Dr. Chess, and letters showing requests for EUOs sent to Dr. Chess. The evidence provided demonstrates that High Definition used the same three buildings, MRI machines, and employees that Carothers used, including at least one employee, Irina Vayman, who was found to be a non-physician owner of Carothers, that Travelers sent an investigator to the three High Definition office locations after it began receiving insurance claims from them, and it was found that the staff was made of the same persons who had worked for Carothers, with some staff members insisting that they were either still employed by Carothers or that there was merely a change in the name of the practice. This evidence

suggests that High Definition was merely a continuation of Carothers, a fraudulently incorporated entity, and therefore Travelers establishes that they had a specific objective justification for requesting the *Mallela* information and EUOs from Dr. Chess, and that Dr. Chess failed to provide said information.

Therefore, Travelers' has shown that there are no triable issues of fact because Travelers had a specific objective justification for requesting that High Definition, through Dr. Chess, submit to an EUO. High Definition's refusal to participate in the requested EUOs constituted a violation of a condition precedent to coverage vitiating the policies, and Travelers properly denied High Definition's no-fault claims for that reason. High Definition's assertion that an insurance company cannot request *Mallela* information to avoid paying no-fault benefits to an entity that it believes is fraudulently incorporated is incorrect (see Andrew Carothers, M.D., P.C. v. Progressive Ins. Co., 33 NY3d 389, 395 [2019]), and High Definition raises no other issues of material fact. As such, summary judgment in favor of the defendants and against High Definition is proper.

Accordingly, and on the foregoing papers, it is

ORDERED that motion of plaintiff High Definition MRI, P.C. for partial summary judgment is denied; and it is further,

ORDERED that the motion of defendants' The Travelers Companies, Inc., Farmington Casualty Company, United States Fidelity and Guaranty Company, and Premier Insurance Company of Massachusetts for summary judgment dismissing the plaintiff's complaint is granted; and it is further,

ORDERED that the Clerk shall enter judgment in favor of the defendants, The Travelers Companies, Inc., Farmington Casualty Company, United States Fidelity and Guaranty Company, and Premier Insurance Company of Massachusetts, dismissing the complaint as against them, and it is further

ORDERED that the action is severed and discontinued as against defendants John Does 1-10.

This constitutes the Decision and Order of the Court.

1/3/2020

DATE

NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

SEQ 001

SEQ 002

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE