Rowe Plastic Surgery of Long Is., P.C. v Oxford Health Ins. Co., Inc.
2023 NY Slip Op 30536(U)
February 7, 2023
Supreme Court, Queens County
Docket Number: Index No. 702091/2022
Judge: Ulysses B. Leverett

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

ROWE PLASTIC SURGERY OF LONG ISLAND, P.C. & EAST COAST PLASTIC SURGERY, P.C., Plaintiffs, -against- OXFORD HEALTH INSURANCE CO., INC., OXFORD HEALTH INSURANCE, INC; OXFORD HEALTH PLANS (NJ), INC.; OXFORD HEALTH PLANS (NY), INC.; and OXFORD HEALTH PLANS LLC, Defendants.	Index No.: 702091/2022 Motion Date: 05/13/2022 Motion Seq. No. 1

Present: Honorable Ulysses B. Leverett

The following numbered papers read on these motions by the Defendants, Oxford Health Insurance, Inc., Oxford Health Plans, (NJ), Inc., Oxford Health Plans (NY), Inc., Oxford Health Plans LLC and Oxford Health Insurance Co., Inc. ("Defendants" and/or "Oxford"), for Orders pursuant to CPLR §3211(a)(1) and (7), dismissing the Complaints of Plaintiffs, Rowe Plastic Surgery of Long Island, P.C., Norman Maurice Rowe, MD, MHA, LLC and East Coast Plastic Surgery, P.C., in their entirety and with prejudice and for such other and further relief as this court may deem just and proper.

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	Papers Numbered
Defendants' Motion to Dismiss and Supporting Papers (Seq. 1)	EF 6-15
Plaintiffs' Opposition and Supporting Papers (Seq. 1)	EF 18-22
Defendants' Reply and Supporting Papers (Seq. 1)	EF 24-30

Plaintiffs allege that they are professional companies that provide health services in the State of New York. Plaintiffs allege in the Complaints that they rendered breast reduction surgeries to the Patients whose claims are at issue and thereafter submitted bills to the Defendants for such services. The Patients were insured through their employers' employee health benefit plan that were fully funded by group policies of insurance issued by Oxford to their employers (the "Plans"), which are employee welfare benefit plans governed by the Employee Retirement Income Security Act of 1974 (as amended) ("ERISA").

Plaintiffs allege in their Complaints that the basis for their lawsuits are purported "contract[s]," between Plaintiffs and Defendants which Plaintiffs refer to as "network exception[s]," that were "issued" by the Defendants to the Plaintiffs prior to the surgeries at issue. Plaintiffs further allege that the Defendants entered into these express contracts when Oxford approved Plaintiffs' Patients' requests for network exceptions, which they claim are "agreement[s] [by the Plans] to pay an out-of-network medical provider to render a specific service or services within a specific time period at a specific price term – the [Plans'] in-network rate," which Plaintiffs allege is 80% of their full-billed charges. Plaintiffs' Complaints each allege four counts

against the Defendants, all sounding in New York State law, including their causes of action for: (1) breach of contract; (2) unjust enrichment; (3) promissory estoppel; and (4) violation of New York's Prompt Pay Law.

STANDARD OF REVIEW

Pursuant to CPLR 3211(a)(7), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... the pleading fails to state a cause of action." On a motion to dismiss pursuant to CPLR 3211(a)(7), although "facts pleaded are to be presumed to be true, ... bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Lutz v. Caracappa*, 828 N.Y.S.2d 426, 427 (2d Dep't 2006). If the court's ruling on a motion to dismiss pursuant to CPLR 3211(a)(7) considers evidentiary material that is incorporated by reference in the pleading – such as the network exception letters identified in the Complaints as the contracts between the parties as well as the health benefits Plans at issue, which are also referenced in the Complaints – then the criterion for granting the motion is "whether the proponent of the pleading has a cause of action, not whether he has stated one." *Guggenheimer v. Ginzburg*, 401 N.Y.S.2d 182, 185 (1977).

Moreover, a complaint should be dismissed pursuant to CPLR 3211(a)(1) "where documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Goldman v. Metro. Life Ins. Co.*, 807 N.Y.S.2d 583, 586 (2005). To constitute documentary evidence, the evidence must be "unambiguous, authentic, and undeniable," such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable. *See Phillips v. Taco Bell Corp.*, 152 A.D.3d 806, 807, 60 N.Y.S.3d 67, 69 (2017)(internal quotations and citations are omitted). Here, Oxford's network exception letters to the Patients whose claims are at issue, which are referenced in the Complaints, are the basis for the alleged promises/agreements between the parties. Because Plaintiffs allege that Oxford's letters are the contracts/promises between the parties, they constitute documentary evidence that are reviewable on a motion to dismiss.[1] *See Kopelowitz & Co., Inc. v. Mann*, 921 N.Y.S.2d 108, 112-113 (2d Dept. 2011) (dismissing claims against entity that documentary evidence (a letter agreement) conclusively established was not a party to the letter agreement); *FG Harriman Commons, LLC v. FBG Owners, LLC*, 906 N.Y.S.2d 62 (2d Dept. 2010) (considering letter agreement, a binding contract, as documentary evidence pursuant to CPLR 3211(a)(1)). Similarly, the Certificate of Coverage and Schedule of Benefits for the Patients' Plans whose claims are at issue, which are referenced in the Complaints, reflect the coverage in effect at all relevant times for the patients whose claims are issue. Indeed, Oxford Senior Legal Services Specialist Jane Stalinski identified the documents as true and correct copies of the Certificates of Coverage and Schedule of Benefits for the Plans at issue. While Plaintiffs generally argue that the Plan documents do not constitute documentary evidence, there is no dispute that this coverage exists and that the Patients are members of these health benefit Plans administered by Oxford (in fact, it is admitted in the Complaints). Because the letters and the Plans "utterly refute[] plaintiff's factual allegations, conclusively establishes a defense as a matter of law," they constitute documentary evidence that can be considered on a motion to dismiss. *Cangemi v. Karp*, 26 N.Y.S.3d 212, *3 (Table) (Sup. Ct. Queens Co., Aug. 5, 2015). Therefore, this Court as well as seven of its sister courts in this County have considered these Plan documents

[1] Plaintiffs' Opposition papers do not challenge whether the network exception letters constitute documentary evidence.

and the network exception letters documentary evidence appropriate for the courts' review. *See e.g., Norman Maurice Rowe, MD, MHA, LLC v. Oxford Health Ins. Co., Inc*, Index No. 714272/2021, 2022 WL 2980647 at *1 (N.Y. Sup. Ct. July 11, 2022)(Leverett, J.S.C.); *Norman Maurice Rowe, MD, MHA, LLC v. Oxford Health Insurance Co, Inc.*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3(N.Y. Sup. Ct. September 1, 2022)(Caloras, J.S.C.); *East Coast Plastic Surgery, P.C. v. Oxford Health Ins. Co., Inc.*, No. 713748/2021, 2022 WL 2072892, at *1 (N.Y. Sup. Ct. May 27, 2022); *Rowe Plastic Surgery of Long Island, P.C. v. Oxford Health Ins. Co.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 3 (N.Y. Sup. Ct. July 21, 2022) (McDonald, J.S.C.); *Norman Maurice Rowe, M.D., M.H.A., L.L.C. v. Oxford Health Ins. Co., Inc.*, No. 713556/21, 2022 WL 17411567, at *1 (N.Y. Sup. Ct. Nov. 30, 2022)(Livote, J.S.C.); *Norman Maurice Rowe, MD, MHA, LLC v. Oxford Health Ins. Co., Inc.*, Index No. 714270/2021 at NYSECF Doc. No. 47, pp. 1-2 (N.Y. Sup. Ct. September 23, 2022) (Dufficy, J.S.C.); *Norman Maurice Rowe, MD, MHA, LLC v. Oxford Health Ins. Co., Inc.*, Index No. 715807/2021 at NYSECF Doc. No. 51, pp. 1-2 (N.Y. Sup. Ct. September 23, 2022) (Dufficy, J.S.C.); *Rowe Plastic Surgery of Long Island, P.C. v. Oxford Health Insurance Co., Inc.*, Index No. 702040/22 at NYSECF Doc. No. 17, p.2 (N.Y. Sup. Ct. September 30, 2022) (Gavrin, J.S.C.).

Lastly, in reviewing a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to CPLR 3211(a)(7), a court may consider documents referenced in a complaint, even if the pleading fails to attach them. *Alliance Network, LLC v. Sidley Austin LLP*, 987 N.Y.S. 2d 794 (NY Cty. Sup. Ct. 2014); *Dragonetti Bros. Landscaping Nursery & Florist, Inc. v. Verizon New York, Inc.*, 71 Misc. 3d 1214(A), 144 N.Y.S.3d 333 (N.Y. Sup. Ct. 2021), *aff'd*, 208 A.D.3d 1125, 176 N.Y.S.3d 223 (NY Cty. Sup. Ct. 2011); *Lore v. New York Racing Ass'n. Inc.*, 12 Misc. 3d 1159(A), 819 N.Y.S.2d 210 (Sup. Ct. 2006). The Court may properly consider the network exception letters because they are referenced throughout Plaintiffs' Complaints, Plaintiffs allege that the letters are the contracts/promises between Plaintiffs and Defendants, and the letters serve as the basis for Plaintiffs' claims against the Defendants. Similarly, Plaintiffs also allege in their Complaints that the Patients are "consumer[s] of health insurance products sold by Oxford," and as such, reference the Plans in their Complaint. As such, this Court can also review the Plan documents attached to the Affidavit of Jane Stalinski because they are incorporated into the Complaints by reference.

PLAINTIFFS' NEW YORK STATE LAW CAUSES OF ACTION ARE EXPRESSLY PREEMPTED BY ERISA AND THUS, ARE SUBJECT TO DISMISSAL

Defendants argue that Plaintiffs Complaints should be dismissed in their entirety and with prejudice on the grounds that each of Plaintiffs' state law causes of action are expressly preempted by ERISA and alternatively, fail to state a claim under New York State Law upon which relief can be granted.

Plaintiffs' state law counts are expressly preempted by ERISA because the claims at issue in this case all "relate to" Oxford's administration of [ ] ERISA governed employee welfare benefit plans. *See* ERISA §514(a); 29 U.S.C. §1144(a); *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 714272/2021, 2022 WL 2980647 at *1; *see also Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3 (holding in a case factually identical to this case that "[t]he only way to determine whether Plaintiffs' claims were administered properly, is to review the terms of the governing ERISA Plan and thus, all of Plaintiff's state law claims are expressly preempted by ERISA . . ."); *East Coast Plastic Surgery, P.C.*, 2022 WL 2072892 at *1;

Pirro v. Nat'l Grid, 590 F. App'x 19, 22 (2d Cir. 2014); *Crawley-Mack v. Rite Aid of New York Inc.*, No. 16-cv-4622(AMD)(RER), 2017 WL 11407303, at *6 (E.D.N.Y. May 17, 2017); *Comprehensive Spine Care, P.A. v. Oxford Health Ins., Inc.*, No. CV 18-13874, 2019 WL 2498925, at *4 (D.N.J. June 17, 2019). Here, the Plans at issue are all employee welfare benefit plans governed by ERISA based on the information in the Plan documents submitted to the Court in support of the Defendants' Motions to Dismiss. Specifically, the Plans clearly identify the intended benefits of the Plans (*i.e.*, medical insurance coverage), a class of beneficiaries (*i.e.*, the employees of Plan Sponsors), the source of financing (*i.e.*, an insurance policy purchased by Plan Sponsors for the benefit of their employees), and procedures for receiving benefits. *See Feifer v. Prudential Ins. Co. of Am.*, 306 F.3d 1202, 1209 (2d Cir. 2002); *see also Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3 (rejecting this identical argument by Plaintiffs holding that because Oxford demonstrated that the Plan is funded through a group insurance policy purchased by the patient's employer from Oxford and the plan describes how members will be enrolled and how to receive benefits, it is an ERISA plan); *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 3 (same); *see e.g., Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647 at*1; *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567, at *1; *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 714270/2021 at NYSECF Doc. No. 47, pp. 1-2; *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 715807/2021 at NYSECF Doc. No. 51, pp. 1-2; *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702040/22 at NYSECF Doc. No. 17, p. 2.

Furthermore, the network exception letters that Plaintiffs allege constitute independent agreements between them and Defendants were, by their express terms, addressed to the Patients, not the Plaintiffs and the Plaintiffs were not mentioned in, or parties to, the letters. Therefore, the letters themselves do not constitute independent agreements between the Defendants and the Plaintiffs. *See Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647 at *2 (holding that because the letter was not addressed to the plaintiffs and because the plaintiffs were not even mentioned in the letter, the letter does not constitute an agreement between the parties); *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 3 (N.Y. Sup. Ct. July 21, 2022) (McDonald, J.S.C.)(holding that "[a]lthough plaintiffs contend that the letter formed an independent agreement between plaintiffs and Oxford, the letter was addressed to the patient and not plaintiffs."); *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3 (same); *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567, at *2.

Furthermore, in the network exception letters, the Defendants informed the Patients that their preapprovals do not guarantee payment for the services rendered and that any payment of benefits will be subject to the terms of the Patients' ERISA Plan. As such, the letters do not constitute agreements independent of the ERISA Plans. *See Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647, at *2 (holding because the "preapproval [letter] does not guarantee payment for the services rendered and [informed the patient] that any payment of benefits will be subject to the terms of the Patient's ERISA Plan [, it]does not constitute an agreement independent of the ERISA Plan.); *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567 at *2 (holding that plaintiff's state law claims were preempted by ERISA because the network exception letter (*i.e.*, the basis for plaintiff's state law claims) stated that "payment was subject to the terms of the patient's plan); *Theunissen v. United HealthCare Grp., Inc.*, 365 F. Supp. 3d 242, 247 (D. Conn. 2019); *Comprehensive Spine Care, P.A.*, 2019 WL 2498925, at *4. The only way to determine whether Plaintiffs' claims were administered properly is to review the terms of the

governing ERISA Plans and thus, all of Plaintiffs' state law claims are expressly preempted by ERISA pursuant to ERISA §514(a); 29 U.S.C. §1144(a). *See e.g., East Coast Plastic Surgery, P.C., supra.*; *Pirro*, 590 F. App'x at 22; *Thompson v. Deutsche Bank Tr. Corp.*, 2014 U.S. Dist. LEXIS 19386, at *13 (S.D.N.Y. Feb. 14, 2014); *Theunissen, supra.*; *Comprehensive Spine Care, P.A., supra.*

While Plaintiffs argue that this matter is not preempted by ERISA because the claim at issue in this case concerns the "amount of payment" at issue and not the "right to payment," this argument is solely based on Plaintiffs' citation to cases concerning complete ERISA preemption under section 502 of ERISA[2], which is not at issue in this case. Complete preemption is a jurisdictional concept concerning whether the federal courts have subject matter jurisdiction over the dispute. *See Farkas v. Group Health Inc.*, No. 18-cv-8535, 2019 WL 657006,*4 (S.D.N.Y. Feb. 1, 2019). Here, the Defendants did not argue that this matter is completely preempted by ERISA pursuant to section 502 of ERISA nor have they argued that a federal court has subject matter jurisdiction over this matter and thus, the cases Plaintiffs rely on are inapposite. Instead, Oxford moved to dismiss the case based on express ERISA preemption pursuant to section 514(a) of ERISA, which merely requires that a defendant demonstrate that the state law claims at issue "relate to" the administration of an ERISA Plan.[3] Indeed, to determine whether a claim is expressly preempted pursuant to section 514 of ERISA the analysis turns on whether a court must review the ERISA Plan to determine whether proper payment had been made. *See Jeffrey Farkas, M.D., LLC*, 2019 WL 657006, at *4. Here, because Plaintiffs have failed to demonstrate that there is an independent agreement between the parties, the Court must review the terms of the ERISA Plans to determine whether Oxford's claim determination (*i.e.*, what was paid on the claim) was correct. Indeed, Plaintiffs' unsupported argument that this matter is not expressly preempted by ERISA because it involves an "amount of payment" has been rejected by several courts, including this Court. *See e.g., Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49; *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022; *Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647; *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567 at *1; *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 714270/2021 at NYSECF Doc. No. 47; *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 715807/2021 at NYSECF Doc. No. 51; *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702040/22 at NYSECF Doc. No. 17, p.2.

PLAINTIFFS' NEW YORK STATE LAW CLAIMS
FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

[2] *Norman Maurice Rowe, M.D., M.H.A., L.L.C., et. al. v. Oxford Health Insurance Co., Inc.*, 22-cv-0117(EK)(CLP) (E.D.N.Y Nov. 16, 2022)(Komitee, J.); *Neuroaxis Neurosurgical Assocs., PC v. Cigna Healthcare of N.Y., Inc.*, No. 11-CV-8517, 2012 WL 4840807, at *4 (S.D.N.Y. Oct. 4, 2012).

[3] To demonstrate that a claim is completely preempted under ERISA requires a stringent two-part test. *See Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004); *see also Montefiore Med. Ctr. v. Teamsters Loc. 272*, 642 F.3d 321, 328 (2d Cir. 2011); *Jeffrey Farkas, M.D., LLC v. Grp. Health Inc., supra.* This two-part test is not required to demonstrate whether a claim is expressly preempted under section 514 of ERISA and Plaintiffs do not suggest or argue otherwise.

Plaintiffs' causes of action are also subject to dismissal on the separate ground that they all fail to state a claim upon which relief can be granted under New York State law because:

(1) The in-network exception approvals, which Plaintiffs allege constitute the basis for their New York State law causes of action, were reduced to writing and demonstrate that they are not agreements or promises to pay Plaintiffs at any rate, instead, they state the exact opposite; *i.e.*, that the letters *do not* guarantee payment and that any payment would be based on the terms of the ERISA Plans and the Defendants' reimbursement policies. *See Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647, at *2(dismissing plaintiffs' causes of action based on the network exception approval letter because it contained language stating that the letter did not guarantee payment and that payment was subject to the terms of the health benefit plan); *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567, at *2 (same); *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 2 (same); *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3-4 (same);

(2) Even if the in-network exception letters constituted agreements and/or promises (which they do not), the letters were addressed to, and for the benefit of, the Patients, not the Plaintiffs. *See Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647, at *2(dismissing plaintiffs' causes of action based on the network exception approval letter on the grounds that it the plaintiffs "are not parties to the in-network exception letter nor are they even mentioned in the letter and thus, they are strangers to the document and have not sufficiently alleged the existence of any legal obligation (contractual or otherwise) owed to them by the Defendants."); *Norman Maurice Rowe, M.D., M.H.A., L.L.C.*, 2022 WL 17411567, at *2 (dismissing plaintiffs' breach of contract claim on the ground that "the Oxford letter was written to the patient . . . [and there] is no allegation that the non-party, in this matter plaintiff, was an intended beneficiary of the said contract."); *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 2 (same); *Norman Maurice Rowe, MD, MHA, LLC*, Index No. 716139/2021 at NYSCEF Doc. No. 49, p. 3-4 (same). The Plaintiffs are not parties to the in-network exception letters nor are they even mentioned in the letters and thus, they are strangers to the documents and have not sufficiently alleged the existence of any legal obligation (contractual or otherwise) owed to them by the Defendants;

(3) Plaintiffs do not allege that Defendants received a direct benefit from the Plaintiffs, that the services at issue were performed for the Defendants, or that the services were performed at the behest of the Defendants, which are all necessary to state a claim for unjust enrichment upon which relief can be granted. *See Kagan v. K-Tel Ent., Inc.*, 172 A.D.2d 375, 376, 568 N.Y.S.2d 756, 757 (1991); *Douglas Elliman, LLC v. E. Coast Realtors, Inc.*, 149 A.D.3d 544, 52 N.Y.S.3d 351, 352 (2017); *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000); *Norman Maurice Rowe, MD, MHA, LLC*, 2022 WL 2980647, at *2; *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 4 (holding that alleging that the defendant received a speculative and indirect benefit is insufficient to support a claim for unjust enrichment); and

(4) Plaintiffs' claims for violation of New York's Prompt Pay law fail to state a claim because there are no independent agreements between the parties on which to predicate such claims and Plaintiffs' Complaints fail to state when or how the bills were submitted to Defendants necessary to state a claim for violation of New York's Prompt Pay law. *Rowe Plastic Surgery of Long Island, P.C.*, Index No. 702017/2022 at NYSECF Doc. No. 25, p. 4; *Norman Maurice Rowe,*

M.D., M.H.A., L.L.C., 2022 WL 17411567, at *3 (plaintiff's claims cannot stand where this court has already found that there was no contract or agreement between the parties).

Based on the foregoing, Plaintiffs' New York State Law causes of action for (1) breach of contract; (2) unjust enrichment; (3) promissory estoppel; and (4) violation of New York's prompt pay law are expressly preempted by ERISA and dismissed from the Complaints. Without any remaining causes of action within the Complaints, it is hereby:

ORDERED that Defendants' Motions to Dismiss Plaintiffs' Complaints are granted and the Complaints are dismissed in their entirety and with prejudice as against said Defendants and the Clerk is directed to enter judgment accordingly in favor of said Defendants.

The foregoing constitutes the decision and Order of this Court.

Dated: 2/7/2023

ULYSSES B. LEVERETT, J.S.C.

Hon. Ulysses B. Leverett